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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 10th August, 2015:—

BILL NO. 226 OF 2015

A Bill to provide for adequate protection of the interests of consumers and for prevention of unfair trade practices and for the said purposes to make provisions for establishment of the Consumer Protection Councils and other authorities for better administration and for timely and effective settlement of consumers' disputes and for matters connected therewith.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Consumer Protection Act, 2015.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.

(4) Save as otherwise expressly provided by the Central Government, by notification, this Act shall apply to all goods and services.

Short title,
extent,
commencement
and
application.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) "advertisement" means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or other documents;

(2) "appropriate laboratory" means a laboratory or organisation—

(i) recognised by the Central Government;

(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

(3) "branch office" means—

(i) any office or place of work described as a branch by the establishment; or

(ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;

(4) "Central Authority" means the Central Consumer Protection Authority established under section 11;

(5) "claimant", in relation to product liability, means any person or a class of persons, who brings a product liability action, and if such an action is brought through or on behalf of an association, the term includes the claimant's descendant, or if such an action is brought through or on behalf of a minor, the term includes the claimant's parent or legal guardian;

(6) "complainant" means—

(i) a consumer; or

(ii) a claimant; or

(iii) any voluntary consumer association registered under the Companies Act, 2013 or under any other law for the time being in force; or

(iv) the Central Government or any State Government; or

(v) one or more consumers, where there are numerous consumers having the same interest; or

(vi) in case of death of a consumer, his legal heir or representative who or which makes a complaint; or

(vii) in case of a consumer who is a minor, his parent or legal guardian; or

(viii) a person who has made a complaint against a person who has publicised a misleading advertisement;

(7) "complaint" means any allegation in writing made by a complainant that—

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—

(a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods, which will be hazardous to life and safety when used, are being offered for sale to the public—

(a) in contravention of any standard relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;

(vii) he has suffered a loss due to an unfair contract entered into by him, with a view to obtaining any relief provided by or under this Act;

(8) "consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person (but does not include a person who avails of such services for any commercial purpose).

Explanation.—For the purposes of this clause,—

(a) the expression "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expression "buys any goods" and "hires or avails any services" include the transactions made through any mode, inclusive of but not limited to, offline, online through electronic means, teleshopping or direct selling or multi level marketing;

(9) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

(10) "consumer rights" means the consumer rights enumerated under section 6 of the Act;

(11) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for

the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods and the expression "defective" shall be construed accordingly;

(12) "deficiency" means—

(i) any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

(ii) any act of omission or commission which causes any damage to the consumer on account of negligence or consciously withholding of relevant information by any person to the consumer, and the expression "deficient" shall be construed accordingly;

(13) "design" means the intended or known physical and material characteristics of a product and includes any intended or known formulation or content of the product and the usual result of the intended manufacturing or other process used to produce the product;

(14) "District Commission" means a District Consumer Grievance Redressal Commission established under clause (a) of section 26;

(15) "electronic form" shall have the same meaning assigned to it under clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

21 of 2000.

(16) "electronic intermediary" means any person who provides technologies or process to enable manufacturer, trader and other persons to engage in advertising or selling various goods or services to consumers and includes online marketplaces and online auction sites;

(17) "electronic record" shall have the same meaning as ascribed to it in the Information Technology Act, 2000;

21 of 2000.

(18) "express warranty" means any material statement, affirmation of fact, promise, or description relating to a product, including any sample or model of a product;

(19) "goods" means goods as defined in sub-section (7) of section 2 of the Sale of Goods Act, 1930, and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006;

3 of 1930.
34 of 2006.

(20) "harm" means—

(i) damage to property other than the product itself;

(ii) personal physical injury, illness, or death;

(iii) mental anguish or emotional harm attendant to personal physical injuries or illness or damage to property; or

(iv) any loss of consortium or services or other loss deriving from any type of harm described in sub-clause (i) or (ii) or clause (iii) of this clause, but shall not include—

(a) harm caused to a product itself;

(b) damage to property under a breach of warranty theory;

(c) commercial or economic loss, including direct, incidental or consequential damages;

(21) "manufacturer" means a person who—

- (i) makes or manufactures any goods or parts thereof; or
- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer; or
- (iv) in the course of business conducted for that purpose, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing a product for commercial purposes; but does not include—
 - (a) any person who is engaged in a business to design, produce, make, fabricate, construct, or re-manufacture any product (or component part of a product); or
 - (b) any product seller holding itself out as a manufacturer to the user of the product; except that any product seller who acts primarily as a wholesaler, distributor, or retailer of products may be a manufacturer with respect to a given product to the extent that such seller designs, produces, makes, fabricates, constructs, or re-manufactures the product before its sale;

(22) "mediation" means the process by which a mediator appointed by the National Commission or a State Commission or a District Commission, as the case may be, mediates the dispute between the parties to the complaint or appeal by the application of the provisions of Chapter V of the Act, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties' own responsibility for making decisions which affect them;

(23) "mediator" is a person who is appointed by the District Commission or State Commission or National Commission as a mediator to help the parties to find their own solution to the dispute;

(24) "material fact" means any specific characteristic or quality of the product, but does not include a general opinion about, or praise of, the product or its quality;

(25) "member" includes the President and a member of the National Commission or a State Commission or a District Commission, as the case may be;

(26) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 26;

(27) "notification" means a notification published in the Official Gazette;

(28) "person" includes—

- (i) a firm whether registered or not;
- (ii) a Hindu undivided family;
- (iii) a co-operative society;
- (iv) an association of persons whether registered under the Societies Registration Act, 1860 or not;
- (v) any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity including any government entity or unincorporated association of persons;

(29) "prescribed" means prescribed by rules made by the Central Government, or as the case may be, by the State Government under this Act;

(30) "product" means any article or goods or substance or raw material or extended cycle of the product, in a gaseous, liquid, or solid state, possessing intrinsic value which is capable of delivery either as an assembled whole or as a component part and is produced for introduction to trade or commerce; but does not include human tissue, blood and blood products, or organs;

(31) "product liability" means the responsibility of a manufacturer or vendor of goods or service provider to compensate for injury or damage caused to a consumer by defective product sold to a consumer or deficiency in services;

(32) "product seller" means—

(a) a manufacturer or vendor of goods or service provider; or

(b) a person who, in the course of business, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing a product in the stream of commerce, but does not include—

(i) a seller of real property, unless that person is engaged in the sale of constructed house or in the construction of homes or flats;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill or services; or

(iii) any person who—

(a) acts only in a financial capacity with respect to the sale of the product;

(b) is not a manufacturer, wholesaler, distributor or retailer; and

(c) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance and operation of the product are controlled by a person other than the lessor;

(33) "recognised agent" means—

(a) a person holding power of attorney, authorising him to make and do such appearances, applications and acts on behalf of any party;

(b) a person carrying on trade or business for and in the name of the party not resident within the local limits of the jurisdiction of the District Commission or the State Commission, where—

(i) the appearance, application or act is made or done, in matters connected with such trade or business only; and

(ii) no other agent is authorised to make or do such appearances, applications and acts;

(34) "regulations" means the regulations made under this Act;

(35) "Regulator" means a statutory body or an Authority established under any law for the time being in force to regulate any goods or services;

(36) "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and includes—

(a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;

(37) "service" means service of any description which is made available to potential users and includes but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(38) "spurious goods and services" mean such goods and services which are claimed to be genuine but they are actually not so;

(39) "State Commission" means a State Consumer Disputes Redressal Commission established in a State under clause (b) of section 26;

(40) "trader", in relation to any goods, means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

(41) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether orally or in writing or by visible representation including by way of electronic record which—

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(h) makes to the public a representation in a form that purports to be—

a warranty or guarantee of a product or of any goods or services; or a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if

there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(j) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of clause (A), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(B) permits the publication of any advertisement whether in any newspaper or otherwise including by way of electronic record, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.—For the purpose of clause (B), "bargaining price" means—

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(C) permits—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(c) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.

Explanation.— For the purpose of sub-clause (C), the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such

results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

(D) permits the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(E) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;

(F) manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

(G) fails to issue bill or cash memo or receipt for the goods sold or service rendered or such bill or cash memo or receipt is issued without mentioning the name of the purchaser;

(H) after selling such goods and rendering of such services, refuses to take back or withdraw the goods or withdraw or discontinue the service and refuses to refund the consideration thereof, if paid, within a period of thirty days after the receipt of goods or availing of services if it is so stipulated and requested by the consumer;

(I) discloses to any other person any personal information given in confidence by the consumer provided that disclosure of personal information under provisions of any law in force or in public interest shall not be construed as an unfair trade practice;

(42) "unfair contract" means a contract between a manufacturer or trader or service provider and a consumer which contains any one or more of the following terms, namely:—

(i) requires manifestly excessive security deposits to be given by a party to the contract for the performance of contractual obligations; or

(ii) imposes any penalty on a party to the contract for the breach thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or

(iii) refuses to accept early repayment of debts on payment of applicable penalty;

(iv) entitles a party to the contract to terminate without reasonable cause the contract unilaterally;

(v) prohibiting contract relating to terms permitting or having the effect of permitting one party to assign the contract to the detriment of the other party without that other party's consent;

(vi) imposes on the consumer any unreasonable charge, obligation or conditions which puts the consumer at disadvantages;

(43) "unsafe goods, services and practices" means goods, services and practices that cause physical or mental injury or any loss or damage to any property movable or immovable.

3. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in
derogation of
any other law.

CHAPTER II

CONSUMER PROTECTION COUNCILS

Central
Consumer
Protection
Council.

4. (1) The Central Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:—

(a) the Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be its Chairman; and

(b) such number of other official or non-official members representing such interests as may be prescribed.

Procedure for
meetings of
Central
Council.

5. (1) The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

Objects of
Central
Council.

6. The objects of the Central Council shall be to promote and protect the rights of the consumers including—

(a) the right to be protected against the marketing of goods and services which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;

(d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and

(f) the right to consumer education.

State
Consumer
Protection
Councils.

7. (1) Every State Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for such State (hereinafter referred to as the State Council).

(2) The State Council shall consist of the following members, namely:—

(a) the Minister-in-charge of Consumer Affairs in the State Government who shall be its Chairman;

(b) such number of other official or non-official members representing such interests as may be prescribed by the State Government;

(c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business, as may be prescribed by the State Government.

8. The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

Objects of
State Council.

9. (1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

District
Consumer
Protection
Council.

(2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:—

(a) the Collector of the district (by whatever name called), who shall be its Chairman; and

(b) such number of other official and non-official members representing such interests as may be prescribed by the State Government.

(3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

10. The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of section 6.

Objects of
District
Council.

CHAPTER III

CENTRAL CONSUMER PROTECTION AUTHORITY

11. (1) The Central Government shall, by notification, establish with effect from such date as it may specify in the notification, a Central Authority to be known as the Central Consumer Protection Authority to promote, protect and enforce the rights of consumers.

Establishment
of Central
Consumer
Protection
Authority.

(2) The Central Authority shall be headed by a Commissioner who shall be an officer of the level of Secretary to the Government of India and five Deputy Commissioners to assist him in the functioning of the Central Authority.

(3) The Commissioner shall be appointed by the Central Government from amongst persons not below the age of forty-five years—

(i) who are holding or have held a post equivalent to the post of Secretary to the Government of India, in the Central Government, or in any State Government or in any Central or State Public Sector Undertaking or autonomous bodies or Universities; or

(ii) persons of eminence in public or social life, who shall be persons of ability, integrity and standing having special knowledge of and such professional experience of not less than fifteen years in the areas related to the consumers' rights and welfare, consumers' policy, law, economics, business, commerce or industry.

(4) The Deputy Commissioners shall be appointed from amongst the persons who are not below the age of forty years—

(i) who are holding or have held a post equivalent to the post of Joint Secretary to the Government of India, in the Central Government or in any State Government or in any Central or State Public Sector undertaking, autonomous bodies or Universities; or

(ii) persons of eminence in public life with specialisation or having adequate and expert knowledge with minimum experience of ten years in the areas of consumers'

rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration.

(5) The Deputy Commissioner shall head anyone of the following five Bureaus in which he has experience and expert knowledge,—

- (a) safety in goods and services;
- (b) quality assurance and standards;
- (c) prevention of consumer detriment and unfair terms in consumer contracts;
- (d) prevention of unfair trade practices, including misleading advertisements;
- and
- (e) enforcement of consumer protection laws.

(6) The office of the Central Authority shall be located in Delhi.

(7) The Central Authority may appoint such number of officers, experts and professionals, for the efficient performance of its functions, as may be prescribed by the Central Government.

(8) The Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority.

Selection
Committee.

12. (1) The Commissioner and the five Deputy Commissioners shall be appointed by the Central Government on the recommendation of a Selection Committee and shall hold office for a period of five years or up to the age of sixty-five years, whichever is earlier.

(2) The Selection Committee shall consist of the following members, namely:—

(a) Secretary of the Department of Consumer Affairs in the Government of India— *ex officio*;

(b) Secretary, Ministry of Law and Justice, Department of Legal Affairs in the Government of India — *ex officio*;

(c) Secretary, Ministry of Home Affairs, Government of India — *ex officio*.

Salary and
allowances of
Commissioner
and Deputy
Commissioner.

13. The salary, allowances and other terms and conditions of service of Commissioner and Deputy Commissioners shall be such, as may be prescribed.

Procedure of
Central
Authority.

14. The Central Authority shall meet at such time and observe such rules of procedure in regard to transaction of business at its meeting as it may specify.

Objects of
Central
Authority.

15. The objects of the Central Authority shall be—

(i) to protect and enforce the rights of consumers including the right to be protected against the marketing of goods or products and services which are unsafe or hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be;

(ii) to prevent unfair trade practices;

(iii) to ensure that no advertisement is made of any goods or services which is misleading or deceiving or contravenes the provisions of this Act and rules and regulations made under it; and

(iv) to ensure that no person engages himself in unfair trade practices or takes part in the publication of any advertisement which is false or misleading.

16. (1) The Central Authority shall exercise powers and functions assigned to it under the Act and, in particular,—

Powers and
functions of
Central
Authority.

(i) to inquire *suo motu* or on a complaint or a direction from the Government into violations of consumer rights enumerated in this Act and shall launch prosecution in an appropriate court or District Commission or State Commission or National Commission, as the case may be;

(ii) to intervene in any proceeding in any allegation of violation of consumer rights before a court, with the permission of such a court or District Commission or State Commission or National Commission, as the case may be;

(iii) to review factors that inhibit the enjoyment of consumer rights and recommend appropriate remedial measures;

(iv) to review safeguards provided under any law for the time being in force for the protection of consumers and recommend measures for their effective implementation;

(v) to make recommendations for adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;

(vi) to undertake and promote research in the field of consumer rights;

(vii) to spread and promote awareness about the rights of consumers and consumers' literacy;

(viii) to encourage non-governmental organisations and other institutions working in the field of consumer rights and cooperate and work with consumer protection agencies;

(ix) to conduct investigations, either *suo motu* or on a complaint or on a reference made by any Consumer Disputes Redressal Agency under Chapter IV, into violations of consumers' rights, conduct search and seizure of documents or records or articles and other forms of evidence, summon delinquent manufacturers, advertisers and service providers and to record oral evidence and direct production of documents and records, as may be prescribed by the Central Government;

(x) to pass orders, on the basis of such investigations for recall of goods found to be unsafe or withdrawal of services found to be unsafe or hazardous and direct, on the basis of its investigations, for discontinuation of practices found to be unfair and prejudicial to consumer interest and order reimbursement of the price of the goods (or services) so recalled, to purchasers of such goods or services;

(xi) to mandate the use of unique and universal goods identifiers (GTIN's) in such goods, as may be necessary to prevent unfair trade practices and protect consumer interests;

(xii) to issue safety notices and alert consumers against unsafe goods or services held to be unsafe;

(xiii) to order withdrawal of advertisements found to be false or misleading and direct issuance of corrective advertisements, wherever necessary;

(xiv) to declare as null and void, terms of contracts found to be unfair to the consumer;

(xv) to impose fine which may extend to fifty thousand rupees and while imposing fine, the following factors shall be taken into account by the Central Authority in determining the amount of fine:

(A) the impact of the violation with respect to population and area affected;

(B) the frequency and duration of the violation;

(C) the vulnerability of the class of persons likely to be adversely affected by the violation; and

(D) the gross revenue from sales effected by the conduct.

(xvi) to take cognizance of misleading advertisements;

(xvii) to enforce its orders against conduct of the industry, manufacturers or traders or service provider for exploiting consumers' interests;

(xviii) to advise Ministries and Departments on consumer welfare measures;

(xix) to frame regulations and guidelines to prevent unfair trade practices and to protect consumer's interest.

(2) The Central Authority may, either *suo motu* or on a complaint made or a direction given by the Government, after investigation into such violations of consumer rights or any unfair trade practice, or any advertisement prejudicial to the public interest, or to the interest of any consumer or consumers in general or any advertisement in contravention of the rights of the consumers, enumerated in this Act, shall forward the matter to the concerned Regulator, if any, with its recommendations:

Provided that the concerned Regulator may take cognizance of the matter referred to it and pass necessary directions as it deems fit.

Powers of Central Authority to inquire into unfair trade practices and misleading advertisement.

17. (1) The Central Authority may inquire into unfair trade practices and any false or misleading advertisement which may come before it for inquiry or upon its own information or knowledge and, if after such inquiry, it is of the opinion that any trade practice is unfair or the advertisement is prejudicial to the public interest, or to the interest of any consumer or consumers in general or the advertisement is in contravention of the rights of the consumers, it may, by order direct that—

(a) the trade practice or the advertisement shall be discontinued or shall not be repeated; or

(b) the trade practice or the advertisement shall stand modified in such manner and within such time as may be specified in the order, to ensure that the trade practice or the advertisement is no longer prejudicial to the public interest or to the interest of any consumer or consumers in general.

(2) Whoever publishes, or is a party to the publication of an advertisement, which—

(a) falsely describes any food; or

(b) is likely to mislead as to the nature or substance or quality of any food or gives false guarantee,

shall be liable to a penalty which may extend to ten lakh rupees.

(3) In any proceeding, the fact that a label or advertisement relating to any article of food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the Central Authority from finding that the contravention was committed.

Prohibition to sale, distribute, etc., articles of food containing extraneous matter.

18. (1) No person shall manufacture for sale or store or sell or distribute or import any article of food for human consumption containing extraneous matter.

(2) The Central Authority shall have power to impose penalty which may extend to one lakh rupees on any person, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption containing extraneous matter.

Regional offices.

19. (1) The Central Authority may have such number of Regional Offices at such places, as may be notified by the Central Government, from time to time.

(2) Each Regional Office shall be headed by an officer of the level of Deputy Commissioner.

(3) The Deputy Commissioner of a regional office shall be competent to exercise the powers of the Central Authority in the States falling within that region including filing of consumer suits in the District Consumer Grievance Redressal Commission and State Consumer Disputes Redressal Commission within the jurisdiction of regional office headed by him.

(4) At district level the powers of the Central Authority shall be exercised by the District Collector concerned who may *suo motu* or otherwise investigate into a matter for protection as well as enforcement of the rights of the consumers and each District Collector shall submit a monthly report of action taken to the Deputy Commissioner of the region concerned.

20. (1) The Central Government may remove the Commissioner and any Deputy Commissioner, who—

Removal of
Commissioner
and Deputy
Commissioners.

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the Commissioner or Deputy Commissioner; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Commissioner or a Deputy Commissioner; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) remains absent in three consecutive sittings except for reasons beyond his control.

(2) Notwithstanding anything contained in sub-section (1) the Commissioner and any Deputy Commissioner shall not be removed from his office except by an order made by the Central Government on the grounds specified in clauses (d), (e) and (f) of that sub-section and after an inquiry held by a Committee comprising of President, National Consumer Disputes Redressal Commission and the Additional Secretary, Consumer Affairs in such manner as may be prescribed.

21. (1) A consumer may file his complaint in writing or through electronic mode, as the case may be, either to the District Collector concerned, or to the Deputy Commissioner in the Regional Office concerned or to the Central Authority with an undertaking that he or she or it has made complaint to only one of the aforesaid offices.

Filing of
complaint
and its
disposal.

(2) In the Central Authority, the Deputy Commissioner concerned with the subject matter of the complaint shall look into the complaint and take appropriate action in accordance with the powers conferred on the Central Authority under this Act.

(3) A complaint filed by a consumer shall be registered by the office of the District Collector or the Regional Office or Central Authority, in such manner as may be prescribed.

(4) The complaint received under sub-section (1) shall be disposed of by the concerned authority within thirty days of receipt of such complaint but if any complaint cannot be disposed within such period for factors beyond the control of that authority concerned, such authority shall seek extension of time with adequate convincing justifications before expiry of such period in which case the competent authority shall not extend time for disposal of the complaint for more than thirty days.

(5) The competent authority to grant extension of time for disposal of complaint is the Deputy Commissioner at the Regional Office in case of District Collector and the Central Authority in case of a request by a Deputy Commissioner at the Regional Office or Head Office.

Fines to be credited to Consumer Welfare Fund.

22. (1) The amount of fine collected under this Act by the Central Authority at the head office or the Regional Offices shall be credited to the Consumer Welfare Fund of the Central Government.

(2) The amount of fine collected by the District Collector shall be credited to the Consumer Welfare Fund of the State Government concerned.

Appeal.

23. (1) The appeal against the decision of the District Collector shall lie to the Deputy Commissioner at the Regional Office concerned.

(2) The appeal against the decision of the Deputy Commissioner of any Regional Office shall lie to the Commissioner of the Central Authority.

Penalty for non-compliance with orders of Central Authority.

24. (1) The Central Authority may cause an inquiry to be made into non-compliance of its orders or directions made in exercise of its powers under the Act.

(2) If any person, without reasonable cause, fails to comply with any order or directions of the Central Authority, he shall be punishable with a fine of not less than twenty-five thousand rupees which may extend to one lakh rupees for each day during which such non-compliance occurs, subject to a maximum of ten lakh rupees.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any legal proceeding, be punishable with imprisonment which may extend to six months or with a fine which may extend to twenty lakh rupees or with both:

Provided that the competent court shall not take cognizance of any offence under this section save on a complaint filed by the Central Authority or any of its officers authorised by it.

Annual Report by Central Authority.

25. The Central Authority shall submit an annual report on its functioning and performance and such other reports and returns as may be directed to be submitted, to the Central Government.

CHAPTER IV

CONSUMER DISPUTES REDRESSAL AGENCIES

Establishment of Consumer Disputes Redressal Agencies.

26. There shall be established for the purposes of this Act, the following agencies, namely:—

(a) a District Consumer Grievance Redressal Commission to be known as the "District Commission" established by the State Government in each district of the State by notification:

Provided that the State Government may, if it deems fit, establish more than one District Commission in a district:

Provided further that in a district where no District Commission has been established or if established, there exists at any time vacancy in the office of the President or a Member, in such case, the State Government may, by notification, direct that—

(i) a District Commission, as specified in the notification, shall exercise the jurisdiction in respect of such district or districts as may be specified in the notification; or

(ii) the President or a Member of a District Commission, as the case may be, shall exercise the power or discharge the functions of the President or the Member, as the case may be, of any other District Commission as may be specified in the notification.

(b) a State Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and

(c) a National Consumer Disputes Redressal Commission to be known as the "National Commission" established by the Central Government by notification.

27. Each District Commission shall consist of—

Composition
of District
Commission.

(a) a person who is, or has been, or is qualified to be a District Judge or an officer not below the rank of a District Magistrate in the State or equivalent, who shall be its President;

(b) not less than two and not more than such number of members, as may be prescribed, at least one of whom shall be a woman, who shall—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognised university; and

(iii) be a person of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, consumer affairs or administration.

28. A person shall be disqualified for appointment as a member of the District Commission if he—

Disqualification
of members.

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member.

29. (1) The President and Members of the District Commission shall be appointed by the State Government on the recommendation of the State Public Service Commission in such manner as may be prescribed.

Appointment
of members
of District
Commission.

(2) Every member of the District Commission shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for reappointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of section 27 and such reappointment is also made on the basis of the recommendation of the State Public Service Commission:

Provided further that a person appointed as a President of the District Commission shall also be eligible for reappointment:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in section 27.

(3) The salary and allowances payable to, and other terms and conditions of service of the President and members shall be such as may be prescribed by the State Government.

(4) The President or Member of the District Commission, on ceasing to hold office as such, shall not appear, act or plead before any District Commission in that State in which he had been the President or Member, as the case may be.

Officers and other employees of District Commission.

30. (1) The State Government shall provide the District Commission such officers and other employees required to assist the District Commission in the discharge of its functions.

(2) The officers and other employees of the District Commission shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Commission shall be such as may be prescribed by the State Government.

Jurisdiction of District Commission.

31. (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the billed value of the goods or services claimed does not exceed rupees fifty lakhs, or up to thrice the limits of such value as may be prescribed.

(2) A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

(3) The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.

Manner in which complaint shall be made.

32. (1) A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed, with a District Commission by—

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided or in respect of which unfair trade practice is alleged;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided or in respect of which an unfair trade practice is alleged, is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general:

Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner, including electronic form, as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Commission may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed.

(4) Where the District Commission does not decide the issue of admissibility of the complaint within the period specified in the second proviso to sub-section (3), it shall be deemed to have been admitted except in the case where the complainant has failed to appear before the District Commission on the day of hearing for admissibility fixed within twenty-one days from the date of filing of the complaint, without any reasonable ground:

Provided that if another date of hearing for admissibility is fixed within the next twenty-one days from the date of last hearing for admissibility and the complainant fails to appear without any reasonable ground, the admissibility of the complaint shall be decided on merit, or if no date of hearing for admissibility is fixed within twenty one days from the last date of hearing for admissibility, the complaint shall be deemed to have been admitted on the expiry of such twenty-one days:

Provided further that in case of complaint filed electronically no physical appearance of the complainant will be necessary for deciding admissibility of the case and unless admissibility of such matter is decided within twenty-one days, the complaint shall be deemed to be admitted after twenty-one days of filing of the complaint.

(5) Where a complaint is allowed to be proceeded with under sub-section (3) or sub-section (4), the District Commission may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Commission, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation.—For the purposes of this section, "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 2013 or any other law for the time being in force.

18 of 2013.

33. (1) The District Commission shall, on admission of a complaint, if it relates to any goods,—

Procedure on admission of complaint.

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, the District Commission shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Commission shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Commission;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Commission may require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) the District Commission shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Commission shall forward a copy of the report along with such remarks as the District Commission may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Commission shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the District Commission shall give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 35.

(2) The District Commission shall, if the complaint admitted by it under section 32 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, the District Commission shall proceed to settle the consumer dispute,—

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint; or

(ii) *ex parte* on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission;

(c) where the complainant fails to appear on the date of hearing before the District Commission, the District Commission may decide it on merits.

(3) An electronic intermediary shall provide such information, documents or records as may be reasonably required in a written order by the District Commission for the purpose of the procedures under sub-section (1) and sub-section (2).

(4) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(5) Every complaint shall ordinarily be disposed of by the District Commission on the basis of an affidavit and documentary evidence placed on record:

Provided that hearing or examination of parties shall be granted where sufficient cause is shown and reason is recorded in writing by the District Commission.

(6) Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission:

Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:

Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(7) Where during the pendency of any proceeding before the District Commission, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

5 of 1908. (8) For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) requiring the discovery and production of any document or other material object as evidence;

(iii) receiving of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of commissions for the examination of any witness, or document; and

(vi) any other matter which may be prescribed.

(9) Any appearance, application or act in or to a District Commission, required or authorised by law to be made or done by a party in such Commission may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by an advocate appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the District Commission so directs, be made by the party in person.

45 of 1860. (10) Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the District Commission shall be deemed to be a civil court for the purposes of section 195, and 2 of 1974. Chapter XXVI of the Code of Criminal Procedure, 1973.

5 of 1908. (11) Where the complainant is a consumer referred to in sub-clause (v) of sub-section (6) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.

5 of 1908. (12) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

Reference to
mediation.

34. (1) The District Commission shall, after admission of the complaint, at the first hearing of the complaint or at any stage during the proceedings, if it appears to the Commission that there exists element of a settlement, which may be acceptable to the parties, direct the parties to opt for settlement of dispute by mediation specified under Chapter V of this Act, except in such cases in which the issues of grave threats to life and grave physical or mental injury are involved.

(2) Before directing the parties to exercise option under sub-section (1), the District Commission shall give such guidance as it deems fit to the parties, to opt for settlement of dispute by mediation.

(3) Where all the parties to the complaint opt and agree for mediation, they shall apply to the Commission, within five days of the direction given under sub-section (1), the Commission shall, within five days of the receipt of the application, refer the matter to be settled by mediation, and the provisions of Chapter V of the Act shall apply:

Provided that the District Commission, in the exercise of such powers, shall not refer any dispute to mediation without the written consent of all the parties to the complaint.

Finding of
District
Commission.

35. (1) If, after the proceeding conducted under section 33, the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

Provided that the District Commission shall have the power to grant punitive damages in such circumstances as it deems fit;

(e) to remove the defects in goods or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or not to repeat it;

(g) not to offer the hazardous or unsafe goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(i) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(j) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than twenty-five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person or persons and utilised in such manner as may be prescribed;

(k) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(l) to provide for adequate costs to parties; and

(m) enforce de-advertising by the party.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Commission and at least one member thereof sitting together:

Provided that where a President, for any reason, is unable to conduct a proceeding or on leave or otherwise, the State Government may, by notification, authorise President of another District Commission to act as the President in that District for such period as may be specified:

Provided further that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(3) Every order made by the District Commission under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission:

Provided further that the other Member shall give his opinion on such point or points referred to him within a period of two months from the date of such reference.

36. Any person aggrieved by the order of the District Commission, against which no appeal has been preferred, may apply for a review of the order of the District Commission within thirty days of such order:

Review by
District
Commission.

Provided that the District Commission shall have the power to review its orders only when there is any error apparent on the face of record.

37. Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of thirty days from the date of the order, in such form and manner, as may be prescribed:

Appeal
against order
of District
Commission.

Provided that no appeal shall lie from an order passed by the District Commission under section 71 on the basis of settlement reached between the parties:

Provided further that the State Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period:

Provided also that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount.

38. (1) Each State Commission shall consist of—

Composition
of State
Commission.

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than forty years of age;

(ii) possess a bachelor's degree from a recognised university;

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, consumer affairs or administration:

Provided that a person shall be disqualified for appointment as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government.

(2) The State Government shall appoint a member under sub-section (1) on the recommendation of a Selection Committee consisting of the following members, namely:—

(i) a Judge of the High Court of the State duly nominated by the Chief Justice of that State—Chairman;

(ii) Secretary of the Law Department of the State—Member;

(iii) Secretary in-charge of the Department dealing with Consumer Affairs in the State—Member.

(3) The salary and allowances payable to, and other terms and conditions of service of, the President and members of the State Commission shall be such as may be prescribed by the State Government.

(4) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for reappointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such reappointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for reappointment in the manner provided in clause (a) of sub-section (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (2) in place of the person who has resigned.

(5) Notwithstanding anything contained in sub-section (4), a person appointed as the President or as a member, before the commencement of the Consumer Protection Act, 2015 shall continue to hold such office as President or member, as the case may be, till the completion of his term.

(6) The President or Member of the State Commission on ceasing to hold office as such, shall not appear, act or plead before the State Commission or any District Commission in the State in which he had been the President or Member, as the case may be, of the State Commission.

39. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.

Officers and employees of State Commission.

(2) The officers and other employees of the State Commission shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed by the State Government.

40. (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

Jurisdiction of State Commission.

(a) to entertain—

(i) complaints where the billed value of the goods or services, exceeds rupees fifty lakhs but does not exceed rupees ten crores or up to thrice the limits of the said value as may be prescribed; and

(ii) appeals against the orders of any District Commission within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case the permission of the State Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

41. On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Commission to another District Commission within the State if the interest of justice so requires.

Transfer of cases.

42. The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Commission may decide from time to time depending on the pendency from one particular District.

Circuit Benches.

43. The provisions relating to the disposal of complaints by the District Commission under sections 32, 33, 34 and 35 shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

Procedure applicable to State Commission.

Appeal to
National
Commission.

44. (1) Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of sub-section (1) of section 40 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount.

(2) Save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.

(3) An appeal may lie to the National Commission under this section from an order passed *ex parte* by the State Commission.

(4) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(5) Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(6) The appeal shall be heard on the question so formulated and the respondent shall, after hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law.

Hearing of
appeal.

45. An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment, as may be provided in the regulations made under this Act:

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

Review by
State
Commission.

46. Any person aggrieved by the order of the State Commission against which no appeal has been preferred, may apply for review of the order of the State Commission within thirty days of such order:

Provided that the State Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

Composition
and powers of
National
Commission.

47. (1) The National Commission shall consist of—

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

(b) not less than fifteen, and not more than such number of members, as may be prescribed out of which one member shall be a woman and one each shall be from Scheduled Caste, Scheduled Tribes, Other Backward Class and minority communities, who shall have the following qualifications, namely:—

(i) be not less than forty-five years of age;

(ii) possess a bachelor's degree from a recognised university; and

(iii) be persons of ability, integrity and standing and having adequate knowledge and experience of at least twenty years in dealing with problems relating to economics, law or, commerce or accountancy or industry or consumer affairs or administration or has held the post of not less than Secretary or of equivalent rank in the Central Government or State Government or persons having judicial experience for at least a period of ten years as a presiding officer at the district court or at any tribunal at equivalent level:

Provided that a person shall be disqualified for appointment as member of National Commission or for continuation as such if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has so abused his position as to render his continuance in office prejudicial to public interest:

Provided further that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely:—

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India—Chairman;

(b) the Secretary in the Department of Legal Affairs in the Government of India—Member;

(c) the Secretary of the Department dealing with Consumer Affairs in the Government of India—Member.

(2) The salary and allowances payable to, and other terms and conditions of service of, the members of the National Commission shall be such as may be prescribed by the Central Government:

Provided that a person appointed as President or as a Member before the commencement of the Consumer Protection Act, 2015 shall continue to hold such office as the President or Member, as the case may be, till the completion of his term.

(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:

Provided that a member shall be eligible for reappointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he

fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such reappointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the National Commission shall also be eligible for reappointment in the manner provided in clause (a) of sub-section (1) :

Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1) in place of the person who has resigned.

(4) A Member of the National Commission, on ceasing to hold office as such, shall not appear, act or plead before the National Commission or any State Commission or District Commission.

Other officers
and
employees of
National
Commission.

48. (1) The Central Government, in consultation with the President of the National Commission shall provide such number of officers and other employees to assist the National Commission in discharge of its functions as it may think fit.

(2) The officers and other employees of the National Commission shall discharge their functions under the general superintendence of the President, National Commission and shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the National Commission shall be such as may be prescribed by the Central Government.

Jurisdiction
of National
Commission.

49. (1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the billed value of the goods or services claimed exceeds rupees ten crore or up to thrice the limits of the said value as may be prescribed; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

(2) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof—

(i) a Bench may be constituted by the President with one or more members as the President deems fit:

Provided that the senior most member of the Bench shall preside over the Bench.

(ii) if the Members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it:

Provided that the President or the Members, as the case may be, shall give his or their opinion on the point or points referred to him or them within a period of two months from the date of such reference.

50. (1) The provisions relating to the disposal of complaints by the District Commission under sections 32, 33, 34 and 35 shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.

Power and procedure applicable to National Commission.

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

51. Where an order is passed by the National Commission *ex parte* against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.

Power to set aside *ex parte* orders.

52. On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Commission of one State to a District Commission of another State or before one State Commission to another State Commission.

Transfer of cases.

53. The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the President of National Commission may decide from time to time.

Circuit Benches.

54. When the office of President of a District Commission, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior most member of the District Commission, the State Commission, or of the National Commission, as the case may be.

Vacancy in office of President of Commissions.

55. Where the National Commission or the State Commission, as the case may be, on application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.

Experts to assist National Commission or State Commission.

56. Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 49, may prefer an appeal against such order of the National Commission to the Supreme Court within a period of thirty days from the date of the order:

Appeal against order of National Commission.

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount with the Supreme Court.

57. Every order of a District Commission or the State Commission or the National Commission, if no appeal has been preferred to the State Commission or the National Commission or Supreme Court, against any order under the provisions of this Act, shall be final.

Finality of orders.

58. (1) The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

Limitation period.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Commission, as the case may be, records its reasons for condoning such delay.

Administrative
control.

59. (1) The National Commission shall have the authority to lay down such adequate standards as the President may like to in consultation with the Central Government from time to time to make the provisions for better protection of the interests of consumers and for that purpose shall have administrative control over all the State Commissions in the following matters, namely:—

(a) monitoring performance of the State Commissions in terms of their disposal by calling for periodical returns regarding the institution, disposal and pendency of cases;

(b) investigating into any allegations against the President and Members of a State Commission and submitting inquiry report to the State Government concerned along with copy endorsed to the Central Government for necessary action;

(c) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;

(d) overseeing the functioning of the State Commission or the District Commission either by way of inspection or by any other means the President may like to order from time to time to ensure that the objects and purposes of the Act are best served and the standards set by the President are implemented without interfering with their *quasi judicial* freedom.

(2) There shall be a Monitoring Cell to be constituted by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view.

(3) The State Commission shall have administrative control over all the District Commissions within its jurisdiction in all matters referred to in sub-sections (1) and (2).

(4) Notwithstanding anything contained in any of the provisions of this Act, the Central Government may, by notification, lay down such standards of performance of various functionaries of the National Commission, State Commission and District Commission including the President and the members of the Consumer Commissions and on other matters concerning the Consumer Commissions as may be considered necessary and supervise their functions with a view to furthering the interest of the consumers, to protect their rights and to secure them speedy, in expensive and simple dispensation of justice in Consumer Commissions.

(5) The National Commission and the State Commission shall furnish to the Central Government periodically or as and when required, any information including the pendency of cases in such form as may be prescribed.

(6) The State Commission shall furnish, periodically or as and when required to the State Government any information including pendency of cases in such form as may be prescribed by the State Government.

60. (1) Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for the District Commission, the State Commission or the National Commission to send, in case of its inability to execute such order, to the court within the local limit of whose jurisdiction,—

Enforcement of orders of District Commission, State Commission or National Commission.

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

to pass necessary direction to the law authorities to execute the order.

(2) Where any order made by the District Commission, State Commission or the National Commission, as the case may be, is not complied with, such person not complying with the order shall be required to pay not less than five hundred rupees or one-half per cent. of the value of the amount awarded, whichever is higher, for each day of delay of such non-compliance of the order till it is paid, in addition to the payment of the awarded amount.

(3) Without prejudice to the provisions contained in sub-sections (1) and (2), where any order made under this Act is not complied with, the District Commission or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order, to be attached.

(4) No attachment made under sub-section (3) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Commission or the State Commission or the National Commission may award such damages, as it thinks fit, to the complainant and shall pay the balance, if any, to the party entitled thereto.

(5) Where any amount is due from any person under any order made by a District Commission, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Commission, the State Commission or the National Commission, as the case may be, and such District Commission or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

61. Where a complaint instituted before the District Commission, the State Commission or the National Commission, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding fifty thousand rupees, as may be specified in the order.

Dismissal of frivolous or vexatious complaints.

2 of 1974.

62. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie both on facts and on law from—

Appeal against orders.

(a) the order made by the District Commission to the State Commission;

(b) the order made by the State Commission to the National Commission; and

(c) the order made by the National Commission to the Supreme Court.

(2) No appeal shall lie to any court from any order of a District Commission or a State Commission or the National Commission except under sub-section (1).

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Commission or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

CHAPTER V

MEDIATION

Establishment
of Consumer
Mediation
Cell.

63. (1) The State Government shall, establish for the purposes of this Act, by notification a District Consumer Mediation Cell attached to the District Commission in each district of the State and a Consumer Mediation Cell attached to the State Commission.

(2) The Central Government shall, establish for the purposes of this Act, by notification a National Consumer Mediation Cell attached to the National Commission.

(3) A Consumer Mediation Cell shall consist of such persons as may be prescribed by the Central Government or the State Government, as the case may be.

(4) Every Mediation Cell shall—

(a) maintain the list of empanelled trained Mediators;

(b) maintain data on a daily basis and submit report on a monthly basis to the State Government or the Central Government, as the case may be.

Empanelment
of mediators.

64. (1) The National Commission shall, for the purpose of appointing the mediator between the parties in complaint or proceedings, prepare a panel of the mediators and put the same on the notice board and website of the National Commission.

(2) Every appointment under sub-section (1) shall be made by the National Commission on the recommendation of a selection committee consisting of the President and two Members of the National Commission.

(3) The State Commission shall, for the purpose of appointing the mediator to mediate between the parties in the complaint or proceedings, prepare a panel of the mediators and put the same on the notice board and website of the State Commission.

(4) Every appointment under sub-section (3) shall be made by the State Commission, on the recommendation of a selection committee consisting of the President and two members of the State Commission.

(5) The District Commission shall, for the purpose of appointing the mediator to mediate between the parties in the complaints, prepare a panel of the mediators and put the same on the notice board and website of the District Commission.

(6) Every appointment under sub-section (5) shall be made by the District Commission, on the recommendation of a selection committee consisting of the President and two members of the District Commission.

(7) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(8) The panel of mediators appointed under sub-sections (1), (3) and (5) shall be for a period of five years from the date of empanelment or up to the age of 70 years:

Provided that empanelled mediator shall be eligible for further extension for another term of five years or up to the age of 70 years of age, whichever is earlier, subject to the condition that he fulfils the other conditions for appointment mentioned in the chapter and such reappointment is also made on the basis of the recommendation of the Selection Committee.

65. The District Commission or the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 64, consider his suitability for resolving the consumer dispute(s) involved and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in the mediation.

Preference for nominating mediators from panel.

66. (1) When a person is approached in connection with his possible empanelment as a mediator, he shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

Duty of mediator to disclose certain facts.

(2) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in sub-section (1).

67. Upon information furnished by the mediator under section 66 or upon any other information received from the parties or other persons, if the District Commission or State Commission or National Commission, in which the complaint or proceeding is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

Revocation of appointment.

68. (1) A person whose name is placed in the panel referred to in section 64 may be removed or his name may be deleted from the said panel, by the Consumer Disputes Redressal Commission concerned, if,—

Revocation from panel of mediators.

(a) he resigns or withdraws his name from the panel for any reason;

(b) he is declared insolvent by any court or is declared to be of unsound mind;

(c) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;

(d) the Consumer Disputes Redressal Commission concerned which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, and is of the view, that it is not possible or desirable to continue the name of that person in the panel:

Provided that, before removing his name, under clauses (c) and (d), the District Commission, State Commission or National Commission shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

(2) The mediator shall follow such procedure as may be prescribed.

(3) The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by principles of natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

5 of 1908.
1 of 1872.

69. (1) Where an agreement is reached between the parties in regard to all the issues in the complaint or proceedings or some of the issues, the same shall be reduced to writing and signed by the parties or their agent.

Procedure of mediation.

(2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the concerned Consumer Disputes Redressal Commission in which the complaint or proceeding is pending.

(3) Where no agreement is arrived at between the parties, before the time limit specified for it or where, the mediator is of the view that no settlement is possible, he shall report the same to the concerned Consumer Disputes Redressal Commission, in writing.

(4) The terms of settlement and the contents of the Settlement Agreement shall be kept confidential by all parties to the settlement.

Offer of settlement by parties.

70. (1) Any party to the suit may, "without prejudice", offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

(2) Any party to the suit may make a, "with prejudice" offer, to the other party at any stage of the proceedings, with notice to the mediator.

Recording settlement and passing of order.

71. Within seven days of the receipt of any settlement, the District Commission, State Commission or National Commission shall pass an order recording that a settlement has been reached between the parties and dispose of the matter:

Provided that if the settlement disposes of only certain issues arising in the complaint or proceeding, the District Commission or the State Commission or the National Commission shall record the settlement on the date fixed and shall include the terms of the said settlement in the order, while deciding the other issues.

CHAPTER VI

PRODUCT LIABILITY

Product liability and its effects on other laws.

72. Where any personal injury, death, or property damage is caused to the consumer resulting from defects in the manufacture, construction, design, formula, preparation, assembly, testing, service, warning, instruction, marketing, packaging, or labelling of any product, the manufacturer or producer of such product shall be liable for the product in product liability action:

Provided that in any product liability action, personal injury shall not include mental anguish or emotional harm in the absence of proof of related and contemporaneous personal physical injury, illness, or death.

Liability of manufacturer of product.

73. (1) A manufacturer shall be liable in any product liability action, to a claimant if the claimant establishes all of the following by a preponderance of the evidence:—

(a) the product contains a manufacturing defect or there is a deviation from manufacturing specifications;

(b) the product is defective in design;

(c) the product failed to contain adequate instructions of correct use to avoid danger or warnings of the improper/incorrect use;

(d) the product did not conform to an express warranty with respect to the product made by the manufacturer or product seller;

(e) the defendant was the manufacturer of the actual product that was the cause of harm for which the claimant seeks to recover compensatory damages; and

(f) the dangerous aspect of the product was the proximate cause of the harm suffered by the claimant.

(2) The claimant shall prove by a preponderance of the evidence that, at the time the product left the manufacturer's control, the manufacturer knew or, in light of then existing scientific and technical knowledge, reasonably should have known of the danger that caused the claimant's harm.

(3) A manufacturer shall not be liable for failure to instruct or warn about a danger that is known or open and obvious to the user or consumer of the product, or should have been known or open and obvious to the user or consumer of the product, taking into account the characteristics of, and the ordinary knowledge common to, the persons who ordinarily use or consume the product.

(4) A manufacturer may be subject to liability under this section although it did not engage in negligent or fraudulent conduct in making the express warranty.

74. (1) A product liability action may not be commenced or maintained against the seller of a product if, at the time of the injury, death, or property damage occurred, the product was misused, altered, or modified.

Exceptions to product liability action.

(2) In any product liability action based on the failure to provide adequate warnings or instructions, the manufacturer shall not be liable, if—

(a) the product was used in a workplace, and the manufacturer provided warnings or instructions to the employer of the claimant, because there was no practical and feasible means of transmitting them directly to the claimant;

(b) the product was sold as a component or material to be incorporated into another product, and the manufacturer provided warnings or instructions to the manufacturer's immediate buyer, and the claimant was exposed to the component or material after it was incorporated or converted into another product;

(c) the product was one that may legally be used or dispensed only by or under the supervision of a class of experts and the manufacturer employed means reasonably calculated to make warnings or instructions available to the using or supervising expert; or

(d) the claimant was under the influence of intoxicating alcohol or any non-over the counter drug which has not been prescribed by a physician for use by the claimant.

75. (1) No product liability action may be asserted against a product seller other than the manufacturer, unless—

Liability of sellers of product.

(i) the product seller exercised substantial control over the aspect of the design, testing, manufacture, packaging, or labelling of the product that caused the alleged harm for which recovery of damages is sought;

(ii) the product seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought;

(iii) the product seller made an express warranty as to such product independent of any express warranty made by a manufacturer as to such product, such product failed to conform to the product seller's warranty, and the failure of such product to conform to the warranty caused the harm complained of by the claimant;

(iv) the claimant is unable, despite a good faith exercise of due diligence, to identify the manufacturer of the product;

(v) the manufacturer is not subject to service of process under the laws of the State; or

(vi) the court determines that the claimant would be unable to enforce a judgment against the manufacturer:

Provided that in such cases, as specified in clauses (i) to (vi), the claims shall be asserted only against the product seller other than a manufacturer.

(2) A product seller other than a manufacturer is liable to a claimant on the basis of negligence if the claimant establishes that—

(i) the product seller sold the product involved in such action;

(ii) the product seller did not exercise reasonable care in assembling, inspecting, or maintaining such product; or in passing on warnings or instructions from such product's manufacturer about the dangers and proper use of such product; and

(iii) such failure to exercise reasonable care was a proximate cause of the harm complained of by the claimant.

CHAPTER VII

MISCELLANEOUS

Protection of
action taken
in good faith.

76. No suit, prosecution or other legal proceedings shall lie against the members of the District Commission, the State Commission or the National Commission or any officer or person acting under the direction of the District Commission, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

Removal of
member of
National
Commission,
State
Commission
and District
Commission.

77. (1) No member of National Commission, State Commission or District Commission shall be removed from office except in accordance with the provisions of this section.

(2) The Central Government, in the case of a member of the National Commission, and the State Government, in the case of a member of the State Commission and District Commission, may by order remove from office any member, if he—

(a) has been adjudged an insolvent;

(b) has been convicted of an offence which, in the opinion of the appropriate Government, involves moral turpitude;

(c) has become physically or mentally incapable of acting as a member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member;

(e) has so abused his position as to render his continuance in office prejudicial to the public interest;

(f) has been guilty of proved misbehaviour:

Provided that no member shall be removed from his office except by an order made by the Central Government or the State Government, as the case may be, on the grounds specified in clauses (d), (e) and (f) and after an inquiry held by a sitting judge of the Supreme Court or the High Court of the State, as the case may be.

Vacancies or
defects in
appointment
not to
invalidate
orders.

78. No act or proceeding of the District Commission, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

Penalties.

79. (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Commission, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

(3) All offences under this Act may be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

2 of 1974.

80. (1) All notices, required by this Act to be served, shall be served in the manner hereinafter mentioned in sub-section (2).

Service of
notice, etc.

(2) The service of notices may be made by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service as are approved by the District Commission, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents including fax message and for the purpose of service of notices to electronic intermediary, the same shall be served at the address provided by the electronic intermediary on the electronic platform from where it provides services as electronic intermediary and for such purpose the electronic intermediary shall designate a grievance officer to accept and process such notices and provide such information, documents or records as required from it.

(3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Commission, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Commission, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (2) when tendered or transmitted to him, the District Commission or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant:

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Commission, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

(4) All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides.

81. Without prejudice to the foregoing provisions of this Act the Central Authority, the National Commission, the State Commission and the District Commission, in exercise of their powers or the performance of their functions under this Act, shall be bound by such directions as the Central Government may issue from time to time in furtherance of consumers' welfare, protection of consumers' rights and ensuring speedy, inexpensive and simple dispensation of justice to the consumers in the Consumer Commission.

Directions by
Central
Government.

82. (1) The Central Government may, by notification, make rules for carrying out any of the provisions contained in this Act.

Power of
Central
Government
to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

- (a) the number of other official and non-official members under clause (b) of sub-section (2) of section 4;
- (b) the procedure for the transaction of business under sub-section (2) of section 5;
- (c) the number of officers, experts and professionals to be appointed under sub-section (7) of section 11;
- (d) salary, allowances and other terms and conditions of the Commissioner and Deputy Commissioner under section 13;

- (e) production of documents and records under clause (ix) of sub-section (1) of section 16;
- (f) the manner of the removal of the Commissioner and Deputy Commissioner under sub-section (2) of section 20;
- (g) the manner of registering complaint under sub-section (3) of section 21;
- (h) the number of members for the District Commission under clause (b) of sub-section (1) of section 27;
- (i) the pecuniary jurisdiction of the District Commission under sub-section (1) of section 31;
- (j) the manner of filing of complaint electronically under the proviso to clause (d) of sub-section (1) and the manner of payment of fee for filing complaint under sub-section (2) of section 32;
- (k) the pecuniary jurisdiction of the State Commission under clause (a) of sub-section (1) of section 40;
- (l) the number of members for the National Commission under clause (b) of sub-section (1) and the salary, allowances and other terms and conditions of members of the National commission under sub-section (3) of section 47;
- (m) salaries, allowances and other terms and conditions of service of the officers and other employees of the National Commission under sub-section (3) of section 48;
- (n) the pecuniary jurisdiction of the National Commission under clause (a) of section 49;
- (o) form of seeking information under sub-section (5) of section 59;
- (p) the number of persons for Consumer Mediation Cell under sub-section (3) of section 63;
- (q) the procedures for Mediation under sub-section (2) of section 68;
- (r) any other matter which is required to be, or may be, prescribed or in respect of which provision is to be made by rules.

Power of
State
Government
to make rules.

83. (1) The State Governments may, by notification, make rules for carrying out the provisions of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the procedure for the transaction of business under sub-section (4) of section 7;
- (b) the procedure for the transaction of business under sub-section (4) of section 9;
- (c) the number of members for each District Commission under clause (b) of section 27;
- (d) the manner of appointment of President and Members of the District Commission under sub-section (1) and the salary, allowances and other conditions of service of President and Members under sub-section (3) of section 29;

(e) the salary, allowances and other terms and conditions of service of the officers and employees of the District Commission under sub-section (3) of section 30;

(f) the number of members for each State Commission under clause (b) of sub-section (1); salary, allowances and other terms and conditions of service of the President and Members of the State Commission under sub-section (3) of section 38;

(g) the salaries, allowances and other terms and conditions and the officers and other employees of the State Commission under sub-section (3) of section 39;

(h) the form and manner of seeking information including pendency of cases under sub-section (6) of section 59;

(i) any other matter which is to be, or may be prescribed, or in respect of which provisions is to be made by rules.

84. (1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

Power of National Commission to make regulations.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may make provisions for the cost of adjournment of any proceeding before the District Commission, the State Commission or the National Commission, as the case may be, which a party may be ordered to pay.

85. (1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and regulations to be laid before each House of Parliament.

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

86. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

68 of 1986.

87. (1) The Consumer Protection Act, 1986 is hereby repealed.

Repeal and Savings.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have done or taken under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

10 of 1897.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

STATEMENT OF OBJECTS AND REASONS

The Consumer Protection Act, 1986 (the said Act) was enacted to provide for better protection of the interests of consumers and for that purpose make provision for establishment of consumer councils and other authorities for the settlement of consumer disputes, and for matter connected therewith. The said Act was amended in 1991, 1993 and 2002 to make provisions of the Act more effective. Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent under the said Act, the disposal of cases has not been fast due to the various constraints. Several shortcomings have been noticed while administering the various provisions of the said Act.

2. Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. There is, therefore, a need to modernise the said Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

3. With a view to widen the ambit and amplify the scope of the said Act and to modernise the legislation on consumer protection to keep pace with the changes in markets; ensure fair, equitable and consistent outcomes for consumers; enable swift executive intervention in the nature of class action both to prevent consumer detriment and to provide redress to consumers, it has been felt necessary to replace the existing the Consumer Protection Act, 1986 by way of introducing a fresh Bill, namely, the Consumer Protection Bill, 2015 by repealing the Consumer Protection Act, 1986.

4. The Consumer Protection Bill, 2015 provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products. This fills an institutional void in the regulatory regime extant. Currently, the task of prevention of or acting against unfair trade practices is not vested in any authority. This has been provided for in a manner that the role envisaged for the CCPA complements that of the sector regulators and duplication, overlap or potential conflict is avoided.

5. In the Bill, provisions for “product Liability” action for or on account of personal injury, death, or property damage caused by or resulting from any product has been added. The basis for product liability action and the liability of a manufacturer to a claimant have been provided. The provision of “Mediation” as an Alternate Dispute Resolution Mechanism has been added. This is aimed at giving legislative basis to resolution of consumer disputes through mediation, thus making the process less cumbersome, simple and faster. This will be done under the aegis of the consumer courts.

6. The Bill, *inter alia*, provides for several provisions aimed at simplifying the consumer dispute adjudication process of the Consumer Grievance Redressal Agencies. These include, among others:—

(i) enhancing the pecuniary jurisdiction of the Consumer Grievance Redressal Agencies;

(ii) increasing minimum number of Members in the consumer courts to facilitate fast disposal of complaints;

(iii) power to review their own orders by the State and District Commission;

(iv) constitution of “Circuit Bench” to facilitate faster disposal of complaints;

(v) reforming the process for the appointment of the President and Members of the District Commission;

(vi) enabling provisions for consumers to file complaints electronically; and

(vii) file complaints in consumer courts that have jurisdiction over the place of residence of the complainant, and deemed admissibility of complaints, if the question of admissibility is not decided within the specified period of 21 days.

7. The notes on clauses explain in detail the various provisions contained in the Bill.

8. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 30th July, 2015.

RAM VILAS PASWAN

Notes on clauses

Clause 1.—This clause provides for the short title and commencement of the proposed legislation.

Clause 2.—This clause provide for the definition of the expressions used in the proposed legislation.

Clause 3.—This clause provides that the proposed legislation shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 4.—This clause provides for establishment of a Central Consumer Protection Council by the Central Government.

Clause 5.—This clause provides for the procedure for meetings of Central Council.

Clause 6.—This clause provides for the objects of Central Council and the consumer rights.

Clause 7.—This clause provides for establishment of State Consumer Protection Councils by the State Governments.

Clause 8.—This clause provides for the objects of the State Cosumer Protection Councils.

Clause 9.—This clause provides for establishment of District Consumer Protection Councils by the State Governments.

Clause 10.—This clause provides for the objects of the District Consumer Protection Councils.

Clause 11.—This clause provides for establishment of Central Consumer Protection Authority and its composition with a Commissioner and five Deputy Commissioners.

Clause 12.—This clause provides for the composition of the Selection Committee for selection of Commissioner and Deputy Commissioners and the tenure of appointment of the Commissioner and Deputy Commissioners.

Clause 13.—This clause empowers the Central Government to prescribe the salary and allowances and other terms and conditions of service of the Commissioner and Deputy Commissioner.

Clause 14.—This clause provides for the meetings of the Central Authority.

Clause 15.—This clause provides for the objects of the Central Authority.

Clause 16.—This clause provides for the powers and functions of the Central Authority.

Clause 17.—This clause provides for the powers of Central Authority to inquire into unfair trade practices and misleading advertisement.

Clause 18.—This clause provides for prohibition to sale, distribute, etc., articles of food containing extraneous matter.

Clause 19.—This clause provides for establishment of Regional Offices of the Central Authority.

Clause 20.—This clause provides for removal of Commissioner and Deputy Commissioners of the Central Authority.

Clause 21.—This clause provides for filing of complaint before the Central Consumer Protection Authority, the procedure for registration of complaints to be prescribed and its disposal.

Clause 22.—This clause provides crediting of the fines collected by the Central Authority to the Consumer Welfare Fund of the Central Government and the Consumer Welfare Fund of the State Governments.

Clause 23.—This clause provides for the appellate authorities against the orders of the District Collector and the Deputy Commissioners exercising the powers of the Central Consumer Protection Authority.

Clause 24.—This clause provides for causing of an inquiry by the Central Authority for non-compliance of its orders or directions made in exercise of its powers under the proposed legislation and imposition of fines in case of non-compliance.

Clause 25.—This clause provides that the Central Authority shall submit an annual report on its functioning and performance and such other reports and returns as may be directed to be submitted, to the Central Government.

Clause 26.—This clause provides for establishment of Consumer Grievance Redressal Agencies at the District, State and Central levels by the State Government and the Central Government. This clause also empowers the State Government to establish more than one District Commission in a district, direct by notification that a District Commission, as specified in the notification, shall exercise the jurisdiction in respect of such district or districts where there are no District Commissions or there are vacancies of President and Members.

Clause 27.—This clause provides for composition of District Commission with one President and not less than two and not more than such number of Members as may be prescribed by the State Government, minimum age and eligibility criteria for appointment.

Clause 28.— This clause provides for disqualification of Members of District Commission under certain circumstances.

Clause 29.—This clause provides for appointment of President and Members of the District Commission by the State Government through the State Public Service Commission in the manner as may be prescribed by the State Government, tenure of appointment, maximum age, eligibility for reappointment of President and Members of District Commission, the salary and allowances payable to, and other terms and conditions of services of, the President and members to be prescribed by the State Government and barring appearance before District Commission of the President or Member of the District Commission, on ceasing to hold office.

Clause 30.—This clause makes provision for the State Government to provide the District Commission such officers and other employees required to assist the District Commission in the discharge of its functions and prescribing the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Commission.

Clause 31.—This clause provides for the pecuniary and geographical jurisdiction for filing of complaints in the District Commission. It also provides that the pecuniary jurisdiction will be based on the billed value of the goods or services claimed not exceeding rupees fifty lakhs. A consumer can file a complaint in a District Commission within the local limits of whose jurisdiction he resides or personally works for gain. This clause also makes provision for Circuit Benches of District Commission.

Clause 32.—This clause provides the manner in which complaint shall be made including enabling provision for filing of complaints electronically, fee to be prescribed for filing of complaints, time limit of twenty one days for admissibility of complaints, deemed admissibility of complaints if admissibility is not decided within the said twenty one days.

Clause 33.—This clause provides for the procedure to be followed by the District Commission on admission of complaint, disposal of a complaint on the basis of an affidavit and documentary evidence placed on record, disposal of a complaint within three months where test or analysis is not required and five months where test is required, passing of

interim orders, powers of a civil court in certain matters, appearance by the party in person, or by his recognised agent, or by an advocate.

Clause 34.—This clause provides for reference by the District Commission of a complaint for mediation with the consent of both the parties to the dispute.

Clause 35.—This clause provides for finding of the District Commission, after the proceeding has been conducted in a complaint and the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices are proved. This clause specifies the relief/compensation a District Commission can grant to a consumer.

Clause 36.—This clause provides that a District Commission shall have the power to review its orders only when there is any error apparent on the face of record.

Clause 37.—This clause provides for appeal against order of the District Commission to the State Commission on the grounds of facts or law within a period of thirty days from the date of the order, in such form and manner, as may be prescribed; barring appeal from an order passed under clause 71 on the basis of settlement reached between the parties; entertaining appeals by the State Commission after the expiry of the period of thirty days on being satisfied that there was sufficient cause for not filing it within that period; entertaining appeal by the State Commission only after the appellant has deposited in the prescribed manner fifty per cent. of the amount ordered to be paid to the complainant.

Clause 38.—This clause provides for composition of the State Commission with a President who is or has been a Judge of a High Court, and not less than four with one woman member, and not more than such number of members, as may be prescribed by the State Government; the minimum age limit of forty years for appointment of member; educational qualification and other eligibility criteria for selection of members; disqualification for appointment as Members on certain grounds; composition of the Selection Committee for selection of members; tenure of appointment of members for five years; upper age limit of sixty years for members; reappointment of President and members; resignation of members and bar on former Presidents and Members to appear, act or plead before the State Commission or any District Commission in the State where they last served.

Clause 39.—This clause makes provision for the State Government to provide the State Commission such officers and other employees required to assist the State Commission in the discharge of its functions and prescribing the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the State Commission.

Clause 40.—This clause provides for the pecuniary and geographical jurisdiction for filing of complaints in the State Commission and the pecuniary jurisdiction will be based on the billed value of the goods or services claimed beyond rupees fifty lakhs and not exceeding rupees ten crore. It also provides that a consumer can file a complaint in State Commission within the local limits of whose jurisdiction he resides or personally works for gain. This clause also makes provision for Circuit Benches of State Commission.

Clause 41.—This clause empowers the State Commission, at any stage of the proceeding, to transfer any complaint pending before the District Commission to another District Commission within the State if the interest of justice so requires.

Clause 42.—This clause empowers the State Commission to have circuit benches.

Clause 43.—This clause provides that the provisions under clauses 32, 33, 34 and clause 35 shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

Clause 44.—This clause provides for appeal against the order of the State Commission to the National Commission within a period of thirty days from the date of the order in such

form and manner as may be prescribed if the appeal involves a substantial question of law; entertaining the appeal by the National Commission after the expiry of the period of thirty days on being satisfied that there was sufficient cause for not filing it within that period; entertaining the appeal the National Commission only after the appellant has deposited in the prescribed manner fifty per cent of the amount ordered to be paid.

Clause 45.—This clause provides for disposal of appeals by the State Commission or the National Commission within a period of ninety days from the date of its admission; not granting of adjournment without sufficient cause; recording of reasons if the appeal is disposed of after the specified period of ninety days.

Clause 46.—This clause empowers the State Commission to review any order made by it, when there is an error apparent on the face of record.

Clause 47.—Sub-clause (1) of this clause provides for composition of the National Commission with a President who is or has been a Judge of the Supreme Court to be appointed by the Central Government after consultation with the Chief Justice of India and not less than fifteen, and not more than such number of members, as may be prescribed by the Central Government out of which one member shall be a woman and one each shall be from Scheduled Caste, Scheduled Tribes, Other Backward Class and minority communities; minimum age for recruitment of not less than forty-five years; educational qualification and other eligibility criteria for appointment; disqualification for appointment on certain grounds; composition of the Selection Committee for selection of Members of the National Commission.

Sub-clause (2) of this clause provides for exercise of the jurisdiction, powers and authority of the National Commission by Benches and the senior most member of the Bench to preside over the Bench and the procedure for deciding any point where there is different of opinion.

Sub-clause (3) of this clause empowers the Central Government to prescribe the salary and allowances payable to, and other terms and conditions of service of the members of the National Commission.

Sub-clause (4) of this clause provides for tenure of appointment of President and Members of the National Commission to be five years or up to the age of seventy years, whichever is earlier; conditions of re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, resignation of Members.

Sub-clause (5) of this clause debars a former Member of the National Commission to appear, act or plead before the National Commission or any State Commission or District Commission.

Clause 48.—This clause makes provision for the Central Government to provide the National Commission such officers and other employees required to assist the National Commission in the discharge of its functions and prescribing the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the National Commission.

Clause 49.—This clause provides for the original and appellate jurisdiction for filing of complaints in the National Commission. The pecuniary jurisdiction will be based on the billed value of the goods or service claimed beyond rupees ten crore.

Clause 50.—This clause provides that the provides under clauses 32, 3, 34 and clause 35 shall, with such modification as may be necessary, be applicable to the disposal of disputes by the National Commission.

Clause 51.—This clause provides for the aggrieved party applying to the National Commission setting aside its order passed *ex parte*.

Clause 52.—This clause empowers the National Commission, at any stage of the proceeding, to transfer any complaint pending before the District Commission of one State

to a District Commission of another State or before one State Commission to another State Commission.

Clause 53.—This clause empowers the National Commission to have circuit benches.

Clause 54.—This clause provides that in the case of the position of President in a District Commission, State Commission, or the National Commission is vacant, or the President is unable to perform the duties for any reasons, these shall be performed by the senior most member of the District Commission, the State Commission, or the National Commission, as the case may be.

Clause 55.—This clause provides that in the larger interest of consumers, the National Commission or the State Commission may direct any individual or organisation or expert to assist the National Commission or the State Commission.

Clause 56.—This clause provides for appeal against the order of the National Commission to the Supreme Court within a period of thirty days from the date of the order; entertaining the appeal by the Supreme Court after the expiry of the period of thirty days on being satisfied that there was sufficient cause for not filing it within that period; entertaining the appeal the Supreme Court only after the appellant has deposited fifty per cent. of the amount ordered by National Commission to be paid.

Clause 57.—This clause provides that order of a District Commission or the State Commission or the National Commission shall be final, if no appeal has been preferred against such order to the State Commission or the National Commission, unless the same is set aside by the State Commission or the National Commission in final adjudication of the appeal.

Clause 58.—This clause provides for a limitation period of two years from the date on which the cause of action has arisen for filing a complaint.

Clause 59.—This clause provides for the National Commission to lay down adequate standards as the President may like to in consultation with the Central Government from time to time to make the provisions for better protection of the interests of consumers and for that purpose shall have administrative control over all the State Commissions in matters of monitoring performance of the State Commission in terms of their disposal by calling for periodical returns regarding the institution, disposal and pendency of cases; investigating into any allegations against the President and Members of a State Commission and submitting inquiry report to the State Government concerned along with copy endorsed to the Central Government for necessary action; issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents; overseeing the functioning of the State Commission or the District Commission either by way of inspection or by any other means the President may like to order from time to time to ensure that the objects and purposes of the Act are best served and the standards set by the President are implemented without interfering with their quasi-judicial freedom.

Sub-clause (2) provides for constitution of a Monitoring Cell by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view. Sub-clause (3) provides for the State Commission to have administrative control over all the District Commissions within its jurisdiction in all matters referred to in sub-clauses (1) and (2).

Sub-clause (4) provides for the Central Government to lay down such standards of performance of various functionaries of the National Commission, State Commission and District Commission including the President and the members of the Consumer Commission and on other matters concerning the Consumer Commission as may be considered necessary and supervise their functions with a view to furthering the interest of the consumers, to protect their rights and to secure them speedy, inexpensive and simple dispensation of justice in Consumer Commission.

Sub-clause (5) provides for furnishing of information by the National Commission and the State Commission to the Central Government periodically or as and when required.

Sub-clause (6) empowers the State Government to prescribe the form for seeking any information including pendency of cases from the State Commission.

Clause 60.—This clause provides for enforcement of orders of District Commission, State Commission or National Commission.

Clause 61.—This clause provides for dismissal of frivolous or vexatious complaints.

Clause 62.—This clause provides that an appeal shall lie both on facts and on law from the order made by the District Commission to the State Commission; the order made by the State Commission to the National Commission; and the order made by the National Commission to the Supreme Court.

Clause 63.—This clause provides for establishment of a District Consumer Mediation Cell attached to the District Commission in each district of the State and a Consumer Mediation Cell attached to the State Commission by the State Government and a National Consumer Mediation Cell attached to the National Commission by the Central Government; Sub-clause (3) empowers the State Government and the Central Government to decide the composition of Mediation Cell; sub-clause (4) provides that every Mediation Cell shall maintain a list of empanelled trained Mediators and data on a daily basis and submit report on a monthly basis to the State Government or Central Government, as the case may be.

Clause 64.—This clause provides for the procedure of empanelment of Mediators, tenure of mediators for a period of five years from the date of empanelment or up to the age of seventy years and for further extension for another term of five years or up to the age of seventy years of age.

Clause 65.—This clause provides for preference for nominating mediators from the panel, considering their suitability for resolving the consumer disputes involved.

Clause 66.—This clause provides that it is the duty of mediator to disclose certain facts which may likely to give rise to a justifiable doubt as to his independence or impartiality.

Clause 67.—This clause provides for revocation of appointment of a mediator if there is justifiable doubt as to his independence or impartiality.

Clause 68.—This clause provides for removal of the name of a Mediator from the panel under certain circumstances.

Clause 69.—This clause provides for the procedure of Mediation.

Clause 70.—This clause provides that any party to the suit may offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

Clause 71.—This clause provides that within seven days of the receipt of any settlement, the District Commission, State Commission or National Commission shall pass an order recording that a settlement has been reached between the parties and dispose of the matter.

Clause 72.—This clause provides that the manufacturer or producer of such product shall be liable for the product in product liability action where any personal injury, death, or property damage is caused to the consumer resulting from defects in the manufacture, construction, design, formula, preparation, assembly, testing, service, warning, instruction, marketing, packaging, or labelling of any product.

Clause 73.—This clause provides for the grounds or basis on which a claimant can take product liability action against a manufacturer.

Clause 74.—This clause provides for exceptions to product liability action against product seller and manufacturer.

Clause 75.—This clause provides liability of seller of a product.

Clause 76.—This clause makes provision for protection of action taken in good faith by the members of the District Commission, the State Commission or the National Commission or any officer or person acting under the direction of the District Commission, the State Commission or the National Commission.

Clause 77.—This clause provides for removal of Members of National Commission, State Commission and District Commission.

Clause 78.—This clause provides that no act or proceeding of the District Commission, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

Clause 79.—This clause provides penalties in the event of a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Commission, the State Commission or the National Commission.

Clause 80.—This clause provides for the procedure for service of notice.

Clause 81.—This clause empowers the Central Government to issue directions on administrative matters to the Central Authority, National Commission, the State Commission and the District Commission, in furtherance of consumers' welfare, protection of consumers' rights and ensuring speedy, inexpensive and simple dispensation of justice.

Clause 82.—This clause provides for the power to the Central Government to make rules.

Clause 83.—This clause provides for the power to the State Governments, Government to make rules, conforming to the model rules made by the Central Government.

Clause 84.—This clause empowers the National Commission to make regulations not inconsistent with the proposed legislation to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the proposed legislation.

Clause 85.—This clause provides that every rule and every regulation made under the proposed legislation shall be laid, as soon as may be after it is made, before each House of Parliament and every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

Clause 86.—This clause provides for the power to remove difficulties that may arise in giving effect to the provisions of the proposed legislation.

Clause 87.—This clause provides for repeal and savings.

FINANCIAL MEMORANDUM

Clause 11 of the Bill seeks to establish and authority to be known as the Central Consumer Protection Authority (hereinafter referred to as the Central Authority) to promote, protect and enforce the rights of consumers, which will be headed by a Commissioner who shall be an officer of the level of Secretary to the Government of India and five Deputy Commissioners to assist him in he functioning of the Central Authority.

2. Clause 13 of the Bill provides for the salary, allowances and other terms and conditions of Commissioner and Deputy Commissioners.

3. Clause 19 of the Bill provides that the Central Authority may have such number of regional offices at such places, as may be notified by the Central Government, from time to time and each regional office shall be headed by an officer of the level of Deputy Commissioner.

4. Clause 27 of the Bill provides that each District Commission shall consist of a President and not less than two and not more than such number of members, as may be provided by rules.

5. Sub-clause (3) of clause 29 of the Bill provides for the salary and allowances payable to, and other terms and conditions of service of, the President and members of District Commission shall be provided by the State Government.

6. Clause 30 of the Bill makes provision for the State Government to provide the District Commission such officers and other employees required to assist the District Commission in the discharge of its functions and the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Commission shall be provided by the State Government.

7. Clause 38 of the Bill provides that each State Commission shall consist of a President and not less than four, and not more than such number of members, as may be prescribed and that the salary and allowances payable to, and other terms and conditions of service of, the President members of the State Commissions shall be provided by the State Government.

8. Clause 39 of the Bill makes provisions for the State Government to determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit and that the salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be provided by rules made by the State Government.

9. Clause 47 of the Bill provides that the National Commission shall consist of a President and not less than fifteen, and not more than such number of members, as may be provided by rules. The salary and allowances payable to, and other terms and conditions of service of the members of the National Commission shall be provided by the Central Government.

10. Clause 48 of the Bill provides that the Central Government, in consultation with the President of the National Commission shall provide such number of officers and other employees to assist the National Commission in discharge of its functions as it may think fit. The salaries and allowances payable to, and the other terms and conditions of the service of, the officers and other employees of the National Commission shall be provided by the Central Government.

11. Clause 59 of the Bill seeks to set up a Monitoring Cell to be constituted by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view.

12. Clause 63 of the Bill provides that the State Government shall establish a District Consumer Mediation Cell attached to the District Commission in each district of the State and a Consumer Mediation Cell attached to the State Commission. The Central Government shall establish a National Consumer Mediation Cell attached to the National Commission. A Consumer Mediation Cell shall consist of such persons as may be provided by the Central Government or the State Government, as the case may be.

13. The financial implications arising from the establishment of the proposed Central Consumer Protection Authority and the appointment of Members for the National Consumer Disputes Redressal Commission is estimated at an annual recurring expenditure of nine hundred lakhs to cover operating costs including salaries and allowances. Appropriate Budgetary allocations shall be made to meet this expenditure from the annual budget of the Department of Consumer Affairs.

14. It would be difficult to indicate the exact expenditure involved in the appointment of additional members, officers and employees of the District Forum and the State Commission as this would depend upon the actual number of such members or officers and other employees appointed by the State Governments. However, the expenditure on this account would be incurred by the State Governments.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 82 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include—(a) number of other official and non-official members under item (b) of sub-clause (2) of clause 4; (b) the procedure for the transaction of business under sub-clause (2) of clause 5; (c) number of officers, experts and professionals to be appointed under sub-clause (7) of clause 11; (d) salary, allowances and other terms and conditions of Commissioner and Deputy Commissioner under clause 13; (e) production of documents and records under item (ix) of sub-clause (1) of clause 16; (f) manner of the removal of the Commissioner and Deputy Commissioner under sub-clause (2) of clause 20; (g) the manner of registering complaint under sub-clause (3) of clause 21; (h) number of members for the District Commission under item (b) of sub-clause (1) of clause 27; (i) the pecuniary jurisdiction of the District Commission under sub-clause (1) of clause 31; (j) manner of filing of complaint electronically under the proviso to item (d) of sub-clause (1) and the manner of payment of fee for filing complaint under sub-clause (2) of clause 32; (k) the pecuniary jurisdiction of the State Commission under item (a) of sub-clause (1) of clause 40; (l) the number of members for the National Commission under item (b) of sub-clause (1) and the salary, allowances and other terms and conditions of members of the National Commission under sub-clause (3) of clause 47; (m) salaries, allowances and other terms and conditions of service of the officers and other employees of the National Commission under sub-clause (3) of clause 48; (n) the pecuniary jurisdiction of the National Commission under item (a) of clause 49; (o) form of seeking information under sub-clause (5) of clause 59; (p) the number of persons for Consumer Mediation Cell under sub-clause (3) of clause 63; and (q) the procedures for Mediation under sub-clause (2) of clause 68.

2. Sub-clause (1) of clause 83 of the Bill empowers the State Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include—(a) the procedure for the transaction of business under sub-clause (4) of clause 7; (b) the procedure for the transaction of business under sub-clause (4) of clause 9; (c) number of members for each District Commission under item (b) of sub-clause (1) of clause 27; (b) the manner of appointment of President and Members of the District Commission under sub-clause (1) and the salary, allowances and other conditions of service of President and members under sub-clause (3) of clause 29; (c) the salary, allowances and other terms and conditions of service of the officers and employees of the District Commission under sub-clause (3) of clause 30; (d) number of members for each State Commission under clause (b) of sub-clause (1); salary, allowances and other terms and conditions of service of the President and Members of the State Commission under sub-clause (3) of clause 38; (e) salaries, allowances and other terms and conditions and the officers and other employees of the State Commission under sub-clause (3) of clause 39; and (f) the form and manner of seeking information including pendency of cases under sub-clause (6) of clause 59.

3. Sub-clause (1) of clause 84 of the Bill empowers the National Commission, with the previous approval of the Central Government, to make regulations not inconsistent with the proposed legislation to provide for all the matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the proposed legislation. Sub-clause (2) provides that in particular and without prejudice to the generality of the forgoing power, such regulations may make provisions for the cost of adjournment of any proceeding before the District Commission, the State Commission or the National Commission.

4. Clause 85 of the Bill provides that every rule made by the Central Government and every regulation made by the National Commission are required to be laid before each House of Parliament and every rule made by the State Government are required to be laid before the State Legislature.

5. The matters in respect of which rules and regulations may be made relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 227 OF 2015

A Bill further to amend the Merchant Shipping Act, 1958.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2015.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

44 of 1958.

2. In section 3 of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act),—

Amendment
of section 3.

(a) after clause 14, the following clause shall be inserted, namely:—

‘(14A) “gross tonnage” and “net tonnage” shall mean respectively the gross tonnage and the net tonnage of a ship as determined in accordance with the provisions of the International Convention on Tonnage Measurement of Ships, 1969;’;

(b) clause (58) shall be omitted.

Insertion of
new Part
XBA.

3. After Part XB of the principal Act, the following Part shall be inserted, namely:—

‘PART XBA

CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE

Application
of this Part.

352RA. This Part applies to—

(a) pollution damage caused due to escape or discharge of bunker oil by every Indian vessel wherever it is and every foreign vessel while it is—

(i) within the territory including territorial sea of India; and

(ii) at a port or a place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 or any other law for the time being in force;

80 of 1976.

(b) preventive measures, wherever taken, to prevent or minimise such damage:

Provided that this Part shall not apply to warships, naval auxiliary or other vessels owned or operated by the Government and used, for the time being, only on Government non-commercial service:

Provided further that the Bunker Convention shall not apply to pollution damage as defined in clause (f) of section 352H relating to Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.

Definitions.

352RB. In this Part, unless the context otherwise requires,—

(a) “Bunker Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended from time to time;

(b) “bunker oil” means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of a ship, and any residues of such oil;

(c) “Civil Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended from time to time;

(d) “incident” means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage;

(e) “person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent sub-divisions;

(f) “pollution damage” means,—

(i) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur:

Provided that compensation for impairment of the environment other than loss or profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(ii) the costs of preventive measures and further loss or damage caused by such preventive measures;

(g) “preventive measures” means any reasonable measures taken by any person after the occurrence of incident to prevent or minimise the pollution damage;

(h) “registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning such ship:

Provided that in the case of a ship owned by a State and operated by a company which in that State is registered as ship's operator, registered owner means such company;

(i) "ship" means any seagoing vessel and sea borne craft of any type whatsoever;

(j) "ship owner" means the owner including the registered owner, bareboat charterer, manager and operator of the ship;

(k) "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State flag that ship is entitled to fly;

(l) "vessel" includes ship.

352RC. (1) Save as otherwise provided in section 352RD,—

Liability for
bunker oil
pollution.

(a) where pollution damage is caused due to discharge or escape of bunker oil on board or originating from a vessel, the owner of the vessel shall be liable—

(i) for any pollution damage caused outside the vessel by contamination resulting from the discharge or escape;

(ii) for the cost of any reasonable measures taken for the purpose of preventing or minimising any pollution damage so caused or likely to be caused; and

(iii) for any damage caused by any such preventive measures so taken:

Provided that where an incident consists of a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first of such occurrences and where more than one person is liable, their liability shall be joint and several;

(b) where there arises a grave and imminent threat of damage being caused outside a vessel, the owner of the vessel shall be liable for the cost of any measures reasonably taken to prevent or minimise any such damage.

(2) Where any incident involving two or more vessels occurs resulting in pollution damage, the owners of all vessels involved in such incident shall, unless the damage is reasonably separable, be jointly and severally liable for such damage.

(3) With respect to ships owned by the Government or the Government of any country and used for commercial purposes, the Government or the Government of each of such country shall be liable for pollution damage under this Part.

352RD. (1) No liability for pollution damage shall be incurred by the owner of a vessel under this Part, if he proves that such damage,—

Exemption
from liability.

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by any act or omission done with an intent to cause such damage by any person other than an employee or agent of the owner; or

(c) was wholly caused by the negligence or other wrongful act of the Government or other authority responsible for maintenance of lights or other navigational aids in the exercise of such function.

(2) If the owner of a vessel proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, then, he shall be wholly or partially exonerated from his liability to such person.

352RE. The owner of the vessel shall be entitled to limit his liability under this Part, in respect of anyone or more incident, in accordance with the provisions of Part XA:

Right of
owner to
limitation of
liability.

Provided that the owner shall not be entitled to limit his liability if it is proved that the incident causing pollution damage occurred as a result of his personal act or

omission, committed or made with an intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Determina-
tion of
limitation of
liability.

352RF. (1) Where the owner of a vessel has or is alleged to have incurred a liability under section 352RC, he may make an application to the High Court for determination of limitation of his liability in accordance with the provisions contained in Part XA in such form and manner as may be prescribed.

(2) After receiving the application under sub-section (1), the High Court shall determine the amount of owner's liability in accordance with the provisions contained in Part XA and direct him to deposit such amount with the High Court.

Consolidation
of claims and
distribution of
amount.

352RG. The High Court shall consolidate all claims against the owner of the vessel who has deposited the amount under section 352RF or his insurer and shall distribute the amount rateably amongst the claimants in accordance with the provisions of Part XA.

Extinguish-
ment of right
to claim.

352RH. The right to claim compensation in respect of an incident under this Part shall extinguish if such claim is not made within a period of three years from the date of occurrence of damage:

Provided that in no case, such claim may be made after six years from the date of incident which caused such damage:

Provided further that where such incident consists of a series of occurrences, the period of six years shall run from the date of the first of such occurrence.

Maintenance
of compul-
sory
insurance or
other
financial
security.

352R I. (1) Every registered owner of a vessel with more than one thousand gross tonnage shall, for the purpose of covering his liability for pollution damage under this Part, be required to maintain compulsory insurance coverage or such other financial security, as may be prescribed, for an amount equivalent to his liability as determined in accordance with the provisions of Part XA.

(2) Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage and in such a case, the insurer or such person may invoke defences (other than bankruptcy or winding up of the owner) which the owner would have been entitled to invoke, including limitation of liability pursuant to section 352RF:

Provided that where the owner is not entitled to limitation of liability under section 352 RF, the insurer or such person may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained under sub-section (1):

Provided further that the insurer or such person may invoke the defence that the pollution damage resulted from the wilful misconduct of the owner but shall not invoke any other defence which such insurer or person might have been entitled to invoke in proceedings brought by the owner against such insurer or person:

Provided also that the insurer or such person shall have the right to require the owner to be joined in such proceedings.

Issue of
certificate.

352RJ. (1) In respect of every vessel which maintains insurance or other financial security under section 352R-I, the Director General shall issue a certificate in such form, containing such particulars and subject to such conditions, as may be prescribed.

(2) On an application made by the owner or agent of any foreign vessel, the Director General may issue a certificate in respect of such foreign vessel on production of satisfactory evidence of maintenance of insurance or other financial security as required under section 352R-I.

(3) Every certificate under sub-sections (1) and (2) may be issued on payment of such fee as may be prescribed.

(4) Every certificate issued under sub-sections (1) and (2) shall be renewed after its expiry in such manner and on payment of such fee as may be prescribed.

352RK. (1) No vessel shall enter or leave or attempt to enter or leave any port or place to which this Part applies, unless it carries on board a certificate issued under section 352RJ.

Ban on entering or leaving port without certificate.

(2) Any certificate issued by a competent authority in any country outside India to a ship registered in that country or any certificate issued by a competent authority of any country which is a contracting party to the Bunker Convention to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Act.

(3) No Port Officer shall permit inward entry or outward clearance to any vessel to which sub-section (1) applies unless the master of the vessel produces the certificate referred to in sub-section (1).

352RL. Nothing contained in this Part shall prejudice the right of recourse that the owner of the vessel may have against any other person in respect of his liability.

Right of recourse.

352RM. (1) Any decision given by a court under sub-section (2) of section 352 RF shall be recognised in the country where the cause of action has arisen, except where—

Recognition and enforcements of decision of court.

(a) the judgment was obtained by fraud; or

(b) the owner or the insurer or the person providing financial security who is a party to the proceedings was not given reasonable notice and a fair opportunity to present his case.

(2) A judgment recognised under sub-section (1) shall be enforceable in each of the affected country as soon as the procedures required in that country have been complied with:

Provided that such procedure shall not permit the merits of the case to be reopened.

352RN. (1) The Central Government may make rules to carry out the purposes of this Part.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner of making application under sub-section (1) of section 352RF;

(b) the other financial securities under sub-section (1) of section 352R-I;

(c) the form of the certificate, the particulars it may contain and the conditions subject to which it may be issued under sub-section (1) of section 352RJ;

(d) the fee for issue of certificate under sub-section (3) of section 352RJ;

(e) the manner of renewal of certificate and the fees under sub-section (4) of section 352RJ.’.

4. For section 390 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections 390, 390A, 390B, 390C, 390D, 390E, 390F, 390G, 390H and 390-I for section 390.

‘390. This Part shall apply to the wrecks located within the territory of India including the territorial sea or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976:

Application of this Part to wrecks.

Provided that this Part shall not apply to,—

(a) any measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended from time to time;

(b) any warship or other ship owned or operated by the Government for non-commercial service.

Definitions.

390A. In this Part, unless the context otherwise requires,—

(a) “authority” means the Director General or any person authorised by him;

(b) “affected country” means the country in whose Convention area the wreck is located;

(c) “coasts” include the coasts of creeks and tidal waters;

(d) “Convention” means the Nairobi Convention on the Removal of Wrecks, 2007, as amended from time to time;

(e) “Convention area” means the exclusive economic zone of a State Party established in accordance with the international law or, if a State Party has not established such zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than two hundred nautical miles from the baselines from which the breadth of its territorial sea is measured;

(f) “hazard” means any condition or threat that—

(i) poses a danger or impediment to navigation; or

(ii) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of India or any other country;

(g) “maritime casualty” means a collision of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo;

(h) “operator of the ship” means the owner of the ship or any other organisation or person including the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended from time to time;

(i) “receiver of wreck” means the person appointed as such under section 391;

(j) “registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty;

Provided that in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, registered owner shall mean such company;

(k) “related interests”, in relation to the interests of India directly affected or threatened by a wreck, means—

(i) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;

(ii) tourist attractions and other economic interests of the areas concerned;

(iii) the health of the coastal population and the well being of the area concerned, including conservation of marine living resources and of wildlife; and

(iv) offshore and underwater infrastructure;

(l) “removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck, and the expressions “remove”, “removed” and “removing” shall be construed accordingly;

(m) “ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources;

(n) “State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State, whose flag the ship is entitled to fly;

(o) “wreck”, in relation to a maritime casualty, includes—

(i) a sunken or stranded ship; or

(ii) any part of a sunken or stranded ship, including any object or goods or cargo that is or has been on board such a ship; or

(iii) any object or goods or cargo that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(iv) a ship that is in distress or is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken;

(v) a vessel abandoned without hope or intention of recovery.

Explanation.—For the purpose of this sub-clause, any question as to whether the measures adopted to assist the ship or any property in danger are effectively being taken or not shall be decided by the Director General.

390B. (1) When any Indian ship, has been involved in a maritime casualty resulting in a wreck in any area to which this Part applies, the master and the operator of the ship shall, without any delay, report such incident to the receiver of wreck and the office of the Director General.

Duty to
report
wrecks.

(2) When an Indian ship has been involved in a maritime casualty resulting in a wreck in a Convention area of any country, the master and the operator of that ship shall, without any delay, report such incident to the affected country in such manner as may be required by that country and shall also report such incident to the Director General.

(3) When any ship other than Indian ship has been involved in a maritime casualty resulting in a wreck in any area to which this Part applies, the master and the operator of the ship shall, without any delay, report such incident to the receiver of wreck and the office of the Director General.

(4) The report referred to in sub-sections (1) and (3) shall provide the name and the principal place of business of the owner or the operator of the ship and all relevant information necessary for the receiver of wreck or the Director General to determine whether the wreck poses a hazard as per the provisions of section 390C or not, including the following information, namely:—

(a) the precise location of the wreck;

(b) the type, size and construction of the wreck;

(c) the nature of the damage to, and the condition of, the wreck;

(d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and

(e) the amount and types of oil, including bunker oil and lubricating oil, on board.

(5) The Director General may, if he considers necessary, direct the receiver of wreck or any other person or authority to give report on details of the wreck.

Determina-
tion of
hazard.

390C. For determining whether a wreck poses a hazard, the following criteria shall be taken into account, namely:—

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area;
- (d) proximity to protected areas including coral reefs and other areas as notified by the Government;
- (e) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the International Maritime Organisation, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted in accordance with requirements of the United Nations Convention on the Law of the Sea, 1982;
- (f) proximity of shipping routes or established traffic lanes;
- (g) traffic density and frequency;
- (h) type of traffic;
- (i) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result if the cargo or oil is released into the marine environment;
- (j) vulnerability of port facilities;
- (k) prevailing meteorological and hydrographical conditions;
- (l) submarine topography of the area;
- (m) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (n) acoustic and magnetic profiles of the wreck;
- (o) proximity of offshore installations, pipelines, telecommunication cables and similar structures;
- (p) proximity of tourist spots and heritage locations; and
- (q) any other circumstances that might necessitate the removal of the wreck.

Locating and
marking of
wrecks.

390D. (1) The Director General may, if he considers necessary, give directions to a receiver of wreck or any other person or authority including the Director General of Light House or the Port Authority or a Maritime Board or Indian Coast Guard, as the case may, within their respective jurisdiction to locate and mark the wreck.

(2) When a wreck has been determined to be a hazard under section 390C, it shall be the duty of the owner or the operator of such a ship to immediately mark the wreck at his or its own cost in such manner as may be prescribed and to maintain such marking until the wreck is removed.

(3) The cost for locating and marking the ship shall be borne by or recovered from the registered owner.

Measures to
facilitate the
removal of
wrecks.

390E. (1) When it is determined that the wreck constitutes a hazard, the receiver of wreck shall inform the fact to the Director General who shall—

- (a) at once, inform the Government of the State of the ship's registry and the registered owner of the ship; and
- (b) proceed to consult the Government of the State of the ship's registry and other countries affected by the wreck regarding measures to be taken in relation to such wreck.

(2) The registered owner of the ship or, as the case may be, the operator of the ship shall remove such wreck which has been determined to constitute a hazard:

Provided that where any dispute arises as to whether the wreck constitutes a hazard or not, the decision of the Director General to whom such dispute may be referred shall be final and binding on all parties.

(3) When a wreck has been determined to constitute a hazard, the registered owner of the ship or any interested person shall provide the Director General or the receiver of wreck or any person or authority so authorised with the evidence of insurance or other financial security maintained by him in accordance with the provisions of section 390G.

(4) The receiver of wreck shall, having regard to the nature of the hazard, set such time limit as may be prescribed for the owner of the ship or its operator to remove the wreck.

(5) If the owner of the ship or its operator or agent does not remove the wreck within the time set under sub-section (4), the receiver of wreck may, at the expense of such owner or operators, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment and the wreck or any sale proceeds derived from such wreck shall become the property of the Central Government.

(6) In circumstances where immediate action is required and the receiver of wreck has informed the owner of the ship or the operator accordingly, he may, at the expense of such owner or operator, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

390F. (1) The registered owner shall be liable for the costs of locating, marking and removing the wreck under this Part unless he proves that the maritime casualty which caused the wreck—

Liability of owner.

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by act or omission done with an intent to cause damage by a third party; or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(2) Nothing contained in this Part shall affect the right of the registered owner to limit his liability in accordance with the provisions of section 352B.

(3) Nothing contained in this Part shall prejudice any right of recourse available to the registered owner against third parties.

390G. (1) Every registered owner of an Indian ship of three hundred gross tonnages and above shall, for the purpose of covering his liability under this Part, be required to maintain compulsory insurance coverage or such other financial security, as may be prescribed.

Maintenance of insurance or other financial security.

(2) Every owner or operator of a ship other than an Indian ship of three hundred gross tonnages and above, while it is in the area to which this Part applies, shall maintain insurance coverage or other financial security to cover his liability under the Convention and shall carry on board a certificate attesting that such insurance or other financial security is in force in accordance with the provisions of the Convention.

(3) The certificate referred to in sub-section (2) shall, in case the ship is—

(a) an Indian ship, be issued by the Authority;

(b) registered in a Convention country other than India, be issued by or under the authority of the Government of that country; and

(c) registered in a country which is not a Convention country, be a certificate issued or certified by the appropriate authority authorised by any Convention country.

(4) Any ship found contravening the provisions of sub-section (2) shall be liable to be detained by the Authority.

(5) Any claim for costs arising under this Part may be brought directly against the insurer or other person providing financial security for the registered owner's liability and in such a case, the insurer or such person may invoke defences (other than bankruptcy or winding up of the registered owner) which the registered owner would have been entitled to invoke, including limitation of liability as provided under section 352B:

Provided that where the registered owner is not entitled to limitation of liability under section 352B, the insurer or such person may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained under sub-section (1):

Provided further that the insurer or such person may invoke the defence that the maritime casualty resulted from the wilful misconduct of the registered owner but shall not invoke any other defence which such insurer or person might have been entitled to invoke in proceedings brought by the registered owner against such insurer or person:

Provided also that the insurer or such person shall have the right to require the registered owner to be joined in such proceedings.

Exception to liability.

390H. (1) The registered owner shall not be liable under this Part for meeting the costs referred to in section 390F if, and to the extent that, liability for such costs is in conflict with—

(a) any other Part or provisions of this Act;

(b) the provisions of the Civil Liability for Nuclear Damage Act, 2010; or

38 of 2010.

(c) any other applicable or binding international legal instrument which India adopts.

(2) Where measures are taken under this Part, to the extent such measures are construed to be salvage under the provisions of section 402, the provisions of said section 402 shall apply for the purposes of remuneration or compensation payable to salvors.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall be construed harmoniously with the provisions of the Indian Ports Act, 1908 and in case of any ambiguity or conflict thereof, the provisions of said Indian Ports Act, 1908 shall prevail.

15 of 1908.

Extinguishment of right to claim recovery of costs.

390-I. Any claim for recovery of costs for locating and marking of the ship under sub-section (2) of section 390D shall be made within a period of three years from the date of determination of the hazard:

Provided that in no case such claim shall be made after six years from the date of the maritime casualty that resulted in the wreck:

Provided further that where the maritime casualty consists of a series of occurrences, the six years period shall run from the date of first occurrence.’

Amendment of section 391.

5. In section 391 of the principal Act, in sub-section (1), for the words “such local limits”, the words “such limits” shall be substituted.

Amendment of section 395.

6. In section 395 of the principal Act, for the words “within any local limits”, the words “within the limits” shall be substituted.

Amendment of section 396.

7. In section 396 of the principal Act, for the words “within the local limits”, the words “within the limits” shall be substituted.

8. In section 398 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

Amendment
of section
398.

“(a) it poses a hazard within the meaning of clause (f) of section 390A;”.

9. In section 399 of the principal Act, in sub-section (2), for the words “are found on or near the coasts of India”, the words “are found in any area to which this Part applies” shall be substituted.

Amendment
of section
399.

10. In section 400 of the principal Act, in clauses (b) and (d), for the words “on or near the coasts of India”, the words “in any area to which this Part applies” shall be substituted.

Amendment
of section
400.

11. For section 402 of the principal Act, the following sections shall be substituted, namely:—

Substitution
of new
sections 402,
402A, 402B,
402C, 402D,
402E, 402F,
402G, 402H,
402-I and
402J for
section 402.

‘402. This Part shall apply to a judicial or arbitral proceedings relating to salvage operations in respect of a vessel or any other property which are instituted in India:

Application
of this Part
to salvage.

Provided that this Part shall not apply to the fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources:

Provided further that this Part shall also not apply to warships or other non-commercial vessels owned or operated by the Government which are entitled, at the time of salvage operations, to sovereign immunity.

402A. In this Part, unless the context otherwise requires,—

Definitions.

(a) “damage to the environment” means substantial physical damage to human health or to marine life of resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents;

(b) “payment” means any reward, remuneration or compensation due under the Salvage Convention;

(c) “property” means any property not permanently and intentionally attached to the shoreline and includes freight at risk;

(d) “Salvage Convention” means International Convention on Salvage, 1989 as amended from time to time;

(e) “salvage operation” means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or any other waters to which this Part applies and includes,—

(i) the raising, removal, destruction or rendering a vessel harmless which is sunk, wrecked, stranded or abandoned including anything that is or has been on board such vessel;

(ii) the removal, destruction or rendering the cargo of a vessel harmless; and

(iii) the measures taken to avert or minimise loss to a vessel or its cargo or both;

(f) “salvor” means any person rendering services in direct connection with salvage operation;

(g) “vessel” means any ship or craft, or any structure capable of navigation.

Salvage payable for saving life, cargo or wreck.

402B. (1) Where services are rendered—

(a) wholly or in part within the territorial waters of India in saving life from any vessel, or elsewhere, in saving life from a vessel registered in India; or

(b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place to which this Part applies as specified in section 390; or

(c) by any person other than the receiver of wreck in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

Salvage operations controlled by Government or port and public authorities.

402C. Where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or of the Coast Guard or the commander or crew of any such vessel or the port authorities or a public authority, as the case may be, it shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

Salvage contracts.

402D. (1) Subject to the provisions of sections 402E and 402F, this Part shall apply to any salvage operations save to the extent a contract otherwise provides expressly or by implication.

(2) The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel.

(3) The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

Annulment and modification of contracts.

402E. A contract or any terms thereof may be annulled or modified if,—

(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or

(b) the payment under the contract is excessive and disproportionate to the services actually rendered.

Duties of salvor and of owner and master.

402F. (1) The salvor shall have the following duties towards the owner of the vessel or other property in danger, namely:—

(a) to carry out the salvage operations with due care;

(b) to exercise due care to prevent or minimise damage to the environment during salvage operations;

(c) to seek assistance from other salvors including port authorities or public authorities when circumstances so require; and

(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger:

Provided that if it is found that such a request was unreasonable, it shall not prejudice the amount of reward of such salvor.

(2) The owner and master of the vessel or the owner of other property in danger shall have the following duties to the salvor, namely:—

(a) to co-operate fully with the salvor during the course of the salvage operations;

(b) to exercise due care to prevent or minimise damage to the environment during salvage operations;

(c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so; and

(d) to provide satisfactory security for the claim, including interest and costs of the salvor for salvage operations, at the request of the salvor.

402G. (1) The Central Government shall take such measures, as may be prescribed, to protect its coastline or related interests from pollution or threat of pollution arising out of a maritime casualty or acts relating to such casualty which may result in major harmful consequences.

Rights and duties of Central Government in relation to salvage operations.

(2) The Central Government shall give such directions as it deems fit to the concerned ship owner or the master or the salvor or a port authority or a public authority or any other person in relation to salvage operations.

(3) The Central Government shall, for the purposes of efficient and effective salvage operations, saving life or property in danger and preventing damage to the environment, seek cooperation from the concerned ship owner or the master or the salvor or a port authority or a public authority or any other person, to give assistance to vessels in need, to admit to ports of vessels in distress or in need of assistance and to give facilities to salvors.

402H. (1) A salvor shall have a right to payment for the services rendered by him relating to salvage operations:

Rights of salvors.

Provided that no such payment shall be made where there is express and reasonable prohibition from the owner or master of vessel or owner of any other property in danger.

(2) The Central Government may prescribe the criteria for claiming rewards, the manner of fixing rewards, the payment of special compensation, the apportionment of payment amongst salvors, the salvage of persons, the payment under the contract, the payment for additional services not covered under the contract and the effect of misconduct of salvors on reward or payment.

(3) The salvor shall have right to enforce his maritime lien against the owner or master of vessel or owner of any other property in danger when satisfactory security for his claim, including interest and costs, has not been provided by such person.

402-I. (1) A dispute relating to claims under this Part shall be determined upon application made by either of the disputing parties to the concerned High Court.

Adjudication of disputes.

(2) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the High Court shall decide the dispute and if there are more persons than one entitled to such amount, the High Court shall apportion the amount thereof, among such persons.

(3) The costs of and incidental to all proceedings before the High Court under this section shall be in the discretion of the High Court and the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

(4) The High Court may, by interim order, direct that the salvor shall be paid such amount as may appear to it to be fair and just, upon such terms, including terms as to security, as may appear to it to be necessary, fair and just, according to the circumstances of each case:

Provided that where any interim payment is made, the security provided under clause (d) of sub-section (2) of section 402E shall be reduced accordingly.

Extinguish-
ment of
claims.

402J. (1) Any action relating to payment under this Part shall extinguish if such claim is not made within a period of two years.

(2) For the purposes of this section, the period of limitation shall commence from the date of completion of salvage operation.’.

Amendment
of section
404.

12. In section 404 of the principal Act, in sub-section (2), after clause (g), the following clauses shall be inserted, namely:—

“(h) the manner of marking wreck under sub-section (2) of section 390D;

(i) the time limit for removing wreck under sub-section (4) of section 390E;

(j) the other financial security under sub-section (1) of section 390G;

(k) the measures to be taken to protect the coastline related interests from pollution or threat of pollution under sub-section (1) of section 402G;

(l) any other matter for which rule is required to be made for the implementation of the Nairobi Convention on the Removal of Wrecks, 2007 or the Salvage Convention.”.

STATEMENT OF OBJECTS AND REASONS

The Merchant Shipping Act, 1958 was enacted to foster the development and to ensure the efficient maintenance of an Indian mercantile marine sector in a manner best suited to serve the national interest. International Maritime Organisation (IMO), as the global standard-setting authority for the safety, security and environmental performance of international shipping, creates fair and effective regulatory framework for the shipping industry in the form of Conventions for universal adoption and implementation.

2. The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention) ensures that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties. The Convention provides a separate instrument covering pollution damage only.

3. The Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi Convention) provides the legal basis to remove shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The Convention fills the gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

4. The International Convention on Salvage (Salvage Convention) 1989 replaced the prevalent "no cure, no pay" principle where a salvor is only rewarded for services if the operation is successful. By towing a damaged tanker away from an environmentally sensitive area, salvor prevents major pollution incidents. But the prevalent "no cure, no pay" principle acted as a disincentive for operations where chances of success were slim. The 1989 Salvage Convention remedied this deficiency by making provision for an enhanced salvage award in preventing or minimising damage to the environment and by introducing a "special compensation" to be paid to salvors who fail to earn a reward in the normal way.

5. India is a member of IMO and as and when Government of India approves to be a party to an International Convention by accession/ratification, the Convention is given effect by suitably incorporating its provisions in our domestic legislation. The accession to Bunker Convention 2001 is now approved and, for implementing the Convention, the Merchant Shipping Act, 1958 requires further amendments. The amendments incorporate the Convention provisions by inserting Part XBA in the Act titled "Civil Liability for Bunker Oil Pollution Damage" India is already a party to the Nairobi Convention and Salvage Convention. However, in the light of experiences gained in implementing Part XIII titled "Wreck and Salvage", it was felt necessary to amend the Part XIII to make them progressive and in tune with Nairobi Convention and Salvage Convention.

6. Under the provisions of the Merchant Shipping (Amendment) Bill, 2015, the registered owner of a vessel has to maintain compulsory insurance cover which allows claim for compensation for bunker pollution damage to be brought directly against an insurer. Ships of 1000 GT and above has to carry a certificate onboard to the effect that it maintains insurance or other financial security, without which these vessels will not be allowed to enter or leave India. The liability cover for bunker pollution damage shall be equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976.

7. The amendments shall also facilitate more purposeful approach towards removal of wrecks and salvage, protect Indian waters from the wreck hazards and introduce internationally recognised and approved rules for removal of wrecks. Private and public

entities will be encouraged to participate in salvage operations on account of adequate remuneration for services rendered specially to protect the environment or minimise its damage. Salvage services provided for saving life, cargo or wreck will be paid on priority to other claims for salvage. Salvage services provided by the Government shall also be entitled to rights and remedies as those of any other salvor. The Bill provides for duties of the salvor, owner and master of a vessel. It also provides for rights and duties of the Central Government in cases of maritime casualty in protecting its environment and coastline and to pass directions with regard to salvage operations.

8. The Bill seeks to achieve the above objectives.

NEW DELHI;

NITIN GADKARI

The 24th July 2015.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to insert a new Part XBA in the Merchant Shipping Act, 1958 relating to Civil Liability for Bunker Oil Pollution Damage. The proposed section 352RN of the said Part XBA confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are— (a) the form and manner of making application under sub-section (1) of section 352 RF; (b) the other financial securities under sub-section (1) of section 352R-I; (c) the form of the certificate, the particulars it may contain and the conditions subject to which it may be issued under sub-section (1) of section 352RJ; (d) the fee for issue of certificate under sub-section (3) of section 352RJ; (e) the manner of renewal of certificate and the fees under sub-section (4) of section 352RJ.

Clause 12 of the Bill seeks to amend sub-section (2) of section 404 relating to power to make rules respecting wreck and salvage so as to insert clauses (h) to (l) therein, to provide rule making powers in respect of— (a) the manner of marking wreck under sub-section (2) of section 390D; (b) the time limit for removing wreck under sub-section (4) of section 390E; (c) the other financial security under sub-section (1) of section 390G; (d) the measures to be taken to protect the coastline related interests from pollution or threat of pollution under sub-section (1) of section 402G; and (e) any other matter for which rules are required to be made for the implementation of the Nairobi Convention on the Removal of Wrecks, 2007 or the Salvage Convention.

The rules made by the Central Government shall be laid, as soon as may be after they are made before each House of Parliament.

The matters in respect of which the rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANOOP MISHRA
Secretary General.